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The Solicitors' Journal

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The Solicitors' Journal

VOL. LXXIX. **Saturday, November 16, 1935.** No. 46

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Current Topics.

The High Sheriff.

In his charmingly written monograph on "Justice and Police," in the English Citizens series, the late F. W. Maitland declared that the whole history of the subject might be brought under this rubric, the Decline and Fall of the Sheriff. True it is that the holder of the office of sheriff cannot and does not now wield the immense power as did his predecessor in title when the shire was let to him at a rent and when within its borders he was little less than a viceroy, but as each of those nominated to serve in the office at the annual meeting in the Lord Chief Justice's court last Tuesday—that being the morrow of St. Martin—or, to be more precise, such as may eventually be "pricked" by His Majesty later at a meeting of the Privy Council, will find the marked diminution of his powers has not been accompanied by complete exemption from responsibilities and duties, some of which are onerous and some honorary. It is the sheriff who is ultimately responsible for the execution of writs and of sentences of death; he acts as returning officer at parliamentary elections; he prepares the panel of juries for assizes; and he or his deputy sits to assess damages in certain matters. Invested though he is with those large powers and responsibilities, it was only after a long dispute between him and the Lord Lieutenant that it was finally settled some years ago that the latter shall have pre-eminence and precedence before the High Sheriff on all occasions within the limits of their jurisdiction. One of the few spectacular functions remaining to the High Sheriff is the duty of attending the judge on circuit. On such occasions he comes to the judge's lodgings attired in court dress or in uniform and attends him to the assize service and to the court. Mr. Justice MacKinnon, who has written pleasantly and learnedly on this subject, has told us that the state and retinue on these occasions are much less decorative than they were in former days, but he added that not so long ago, in a midland city, the sheriff revived something of the ancient splendour by meeting him with a swaying coach, gloriously repainted, a bewigged coachman driving a mettled pair, two footmen up behind carrying long sticks, javelin men bearing ancient javelins that had once been those of his ancestor when he had filled the office, and two trumpeters with his arms and those of the county upon their banners, the High Sheriff himself wearing the full dress uniform of a Guards regiment. It was, as the learned judge says, a magnificent show to which the citizens were treated on that occasion. It is to be hoped that the satisfaction of thus providing a spectacle for the public to some extent compensated the holder of the office for the trouble and expense to which he was put.

Central Criminal Court: November Session.

The November calendar of the Central Criminal Court, which opened on Tuesday, was an unusually light one, there being fewer than eighty persons awaiting trial or sentence at the beginning of the week. The list included a charge of murder, a charge of attempted murder, five charges of wounding, two of robbery with violence, eight of burglary or housebreaking, and two of demanding money with menaces. There were also two charges of perjury, five of bigamy, two of counterfeiting, five of false pretences, six of conspiracy to defraud, while the list also contained a charge of fraudulent conversion, two charges of stealing and two charges relating to alleged offences under the Bankruptcy Acts. It may be remembered that the October session lasted only seven days. The light list for that month is thus followed by another.

Imprisonment for Debt.

We have on former occasions dealt with the subject of imprisonment for failure to pay fines or rates or to comply with the provisions of maintenance and affiliation orders, and we do not therefore propose to go into the matter in detail at this stage. It is thought, however, that the contents of a memorandum which has just been issued by the Home Office for the assistance of magistrates in view of the coming into force of the Money Payments (Justices Procedure) Act, 1935, on 1st January next should be shortly indicated. The magnitude of the problem is clear from a covering letter in which the Home Secretary expresses an earnest desire for the co-operation of magistrates, and in which it is stated, in effect, that every year about 20,000 persons, or more than one-third of the total number sent to prison, are imprisoned by reason of defaults in the payment of fines or other sums of money. "This army of persons," the letter states, "reaches prison not because offences have been committed for which the courts regard imprisonment as the fitting penalty, but because of failure to pay sums due under the decisions of the courts." Imprisonment, while regarded as the ultimate sanction for the enforcement of such decisions and one which cannot be dispensed with, is "not a sanction that ought lightly to be applied." The serious hardship which this form of punishment may inflict, not only upon the defaulter, such as by loss of employment and by injury to reputation and character unmerited by the nature of the offence or the circumstances of the default, but also upon members of his family, is duly alluded to, and the changes to be brought into operation under the new Act are outlined, the hope being expressed that "every Bench will, without delay, review the policy and methods they have hitherto followed." "The general principle underlying the provisions of the new Act

is," it is stated, "that the grave step of sending a defaulter to prison should only be taken as a result of a considered decision of the justices, and that, except as regards certain classes of persons convicted of offences, this decision shall only be taken after an inquiry as to the means of the defaulter in his presence." The memorandum indicates the application of this policy to the several matters involved—fines, maintenance and affiliation orders, and rates.

Home Office Memorandum.

DEFAULTS in the payment of fines, which account for some 11,000 of the 20,000 cases of imprisonment alluded to in the previous paragraph, would not, it is intimated, have resulted in committals in some cases if justices had been aware of the means and circumstances of the persons concerned, while in other cases payment would have been made if the liability imposed had been better adjusted to resources, particularly by the requirement of small weekly payments. Under the Money Payments (Justices Procedure) Act, the court will not, where time is allowed for payment, impose a period of imprisonment in default at the time when the fine is imposed, and thus the issue of a commitment warrant merely as a ministerial act by a justice, who knows nothing of the means of the defaulter, or the circumstances which have led to the default, will be obviated. With regard to maintenance and affiliation orders—failure to pay sums under these result in some 6,000 imprisonments annually—the memorandum points out that there is nothing the court can do to help the woman where the man's resources leave no margin beyond what is necessary for his subsistence. The fact that a small sum which a man can pay is insufficient for the woman's needs does not justify an order for a larger sum. The court's first duty is to consider the maximum which a man can be expected to pay in the light of his means and resources; its second duty is to consider what sum within that maximum is reasonable having regard to the income of the woman. The tendency to have regard to the hardship of the woman's position and to take insufficient account of the man's means is deprecated. With regard to imprisonments for non-payment of rates, which number about 3,000 annually, the memorandum alludes to the existing practice of issuing commitment warrants in the absence of defaulters—some of whom could not pay and should not have been punished for their failure—and to the remedy provided by the new Act, which requires the presence of the defaulter and an examination into his means before a commitment warrant is issued. For this purpose power is given to issue a summons which, if not obeyed, may be followed by the issue of a warrant. It is recognised that a problem of the magnitude of that with which the Act deals cannot be handled without adding to the already heavy duties of the justices, but the Home Secretary states that he is confident they will appreciate the importance of the object in view and will not fail to take advantage of the facilities given to them by the new legislation.

The Duties of the Police.

CRITICISM directed against the employment of the police in capacities not very obviously connected with their primary duties is heard not infrequently, and, while it may be questioned whether the authors of such criticisms are fully alive to the possibility that such employment may be due to some extent to the necessity of an ample reserve to meet any contingency, it is interesting to note that Scotland Yard recently held an inquiry to ascertain how much time is in fact devoted by officers in the Metropolitan Police District to duties other than the prevention and detection of crime. During the week of the inquiry some 19,000 men were required to state how much time they spent in attending to injured persons, obtaining particulars, dealing with motoring cases, and in street duties. The inquiry related to "inside" duties—comprising such matters as cautions, statements, examining reports for process, preparing traffic plans, traffic statistics and traffic returns—and "outside" duties which include point duty, watching over the safety of school children, theatres, special events, road works, observation of pedestrian crossings, other traffic offences and inquiries, attendance at court and what are described as miscellaneous traffic duties. The forms which were required to be filled in and which were drafted in accordance with the points above enumerated, did not apply to officers detailed especially for traffic duties. *The Times*, which gave particulars of the foregoing census on the day after it began, stated that when the returns were complete they would be dealt with by the statistical department at Scotland Yard, and a report would be prepared.

The Law and Bathing Pools.

THE popularity of bathing pools, fostered perhaps by a number of spells of hot weather which have been enjoyed or endured during the past few years, has resulted in considerable attention being drawn to the factors securing the proper cleansing and maintenance of such premises. In 1929 a report on "The Purification of the Water of Swimming Baths," prepared by the Ministry of Health, was published by the Stationery Office, and is still obtainable (price 1s.). A circular, No. 1503, has recently been issued by the Ministry wherein the attention of the London County Council and the borough and urban and rural district councils throughout the country is directed to the said report, and the importance of taking the necessary steps during the winter months for ensuring that a proper standard of cleanliness and purity of water is maintained in swimming baths and pools is emphasised. The circular, which is obtainable from the Stationery Office (price 1d.), strongly urges that the recommendations of the report, which relate to all swimming baths and pools open to the public, be applied. "It has been questioned," the circular states, "whether local authorities have any control over privately owned pools used by the public." While it is thought that legal proceedings in practice will seldom be needed and that in general the necessary measures will be secured if the local authority concerned instructs the medical officer of health to keep such pools under observation and, where conditions are unsatisfactory, to make appropriate representations to the owners, the Minister, it is stated, is advised that powers are available under the Public Health Act, 1875. Reference is made to ss. 91 and 102 of that Act, the former of which provides that, *inter alia*, "any premises in such a state as to be a nuisance or injurious to health . . . shall be deemed to be nuisances" capable of being dealt with under the Act, while the latter section confers on a local authority "or any of their officers" a power of entry "into any premises for the purpose of examining as to the existence of any nuisance thereon." The importance of this aspect of the problem has, of course, been largely increased in recent years by the provision of privately owned pools in connection with road houses and similar premises.

Defective Summing Up.

THERE is a point at which the saying "familiarity breeds contempt"—or, if an emendation be allowed, "oblivion"—ceases to be applicable. One accustomed, day in and day out, to instruct juries in their duties is not likely to fail to inform them that the onus of proving a case lies on the prosecution. Another upon whom such duty devolves only occasionally may, by forgetfulness, omit to state to a jury a principle of which he may consider, and rightly consider, they are as well aware as himself. A recent case before the Court of Criminal Appeal affords an interesting illustration of this tendency. The appellant, who had been convicted of driving a motor vehicle when under the influence of drink and of dangerous driving, was fined £25 and costs, and his licence was suspended for two years. The appeal was allowed and the conviction was quashed by the Court of Criminal Appeal for the reasons which

appear from the following excerpt from the judgment of the Lord Chief Justice, which appeared in *The Times*. The summing up had one merit—brevity. It had two serious demerits—it nowhere told the jury that it was for the prosecution to prove their case, and nowhere, in any adequate sentence, did it put the defence to the jury. Those who occasionally had the duty of summing up must, LORD HEWART said, remember that it was vital that in every case the jury should be told that the prosecution must make out their case, and vital also that, if there was a defence, it should be adequately left to the jury. That failure in these directions is not invariably accompanied by the same result is indicated by the fact, duly alluded to in the same judgment, that a bad summing up may spoil an otherwise good case.

An Employer's Obligation.

MR. CLAUDE MULLINS recently directed attention at the South-Western Police Court to an obligation on the part of employers in cases where their employees are charged with a criminal offence, the existence of which does not appear to be sufficiently appreciated. In the case in question the accused was charged with embezzling three small sums he had collected for his employers, and the manager of the firm said he had not troubled to bring the books because he thought the accused would plead "Guilty." In fact, he did so plead—but the court refused to accept the plea and the accused was remanded for a week for the production of the books, the manager agreeing to stand surety for his bail. According to the report in *The Times*, to which we are also indebted for the foregoing particulars, the learned magistrate said: "I should like to kill the haughty attitude on the part of employers. These men are ignorant. They are brought here on a criminal charge and employers must be prepared to prove their case. Because a man gets wrong with his books it does not mean embezzlement. These men do not know how to defend themselves."

Accident Claims against Estates of Deceased Persons.

THE attention of readers may be drawn to applications recently granted by the Probate, Divorce and Admiralty Division of the High Court (reported at p. 861 of this issue) for the appointment of nominees as administrators under s. 162 of the Supreme Court of Judicature Act, 1925, amended by s. 9 of the Administration of Justice Act, 1928, in order to give effect to certain provisions of the Law Reform (Miscellaneous Provisions) Act, 1934. That Act, of course, provides for the survival of the causes of action with which it is concerned both against and vested in the deceased; but the modifications effected in the scope of the doctrine *actio personalis moritur cum persona* has usually been considered in relation to the new powers vested in the representatives of deceased persons in claims for damages against parties responsible for the death in cases of street accidents. In the applications above mentioned the claims were against the estates of deceased persons. Section 1 (3) (*b*) of the Act provides that no proceedings shall be maintainable in respect of a cause of action in tort which, by virtue of the section, has survived against the estate of a deceased person, unless the cause of action arose not earlier than six months before his death and proceedings are taken out in respect thereof not later than six months after his personal representative took out representation. In one of the cases in which the applications referred to were made, the next of kin of the deceased, who was a minor, had declined to take out any representation; in the other, the widow of the deceased refused, as did also his father, to take out letters of administration on intestacy. In these cases the applicants were precluded from claiming representation as creditors prior to judgments in their favour; nor, in the absence of representation, could they make any claim in respect of the insurance policies. The court accordingly appointed nominees under the statutory provisions above referred to.

Recent Decisions.

IN *Myers* v. *Walker* (*The Times*, 31st October), a rule *nisi* for *certiorari* calling on certain justices to show cause why a conviction for dangerous driving should not be quashed, on the ground that the justices had no jurisdiction to record it, was made absolute with costs against the justices. The accused was not informed of his right to be tried by a jury until after the case for the prosecution was closed. The justices also ignored the provisions of s. 11 (2) of the Road Traffic Act, 1930, which requires particulars of a conviction of this character to be endorsed on the licence of the person convicted.

In *Ex parte Evans* (*The Times*, 6th November) where the court refused an application for a rule *nisi* calling on the Chief Constable of Carmarthen and the printers and publishers of the *South Wales Evening Post* and the *Carmarthen Journal* to show cause why they should not be attached for contempt of court, the Lord Chief Justice drew attention to the conditions which must be present in cases where matter is alleged to prejudice a fair trial. Reference was made to the observations of LORD RUSSELL OF KILLOWEN in *Rex* v. *Payne* [1896] 1 Q.B. 577, at p. 580, to the effect that applications of this nature had in many cases gone too far. In the case now being noted, it had not, LORD HEWART intimated, been established in the natural meaning of the words that the applicant had been referred to. In any case, as LORD RUSSELL said, an applicant "must show that something has been published which is intended, or at least is calculated, to prejudice a trial which is pending."

In *Powell Duffryn Steam Coal Co. Ltd.* v. *Edwards and Others* (p. 860 of this issue), it was held that there was no custom or usage in existence on 2nd September, 1915, for holding a "show-cards" at a colliery without the owners' permission, which could on or before that date have been held in a court of law to form part of the contract of employment between the workman and the company. This rendered the holding of such illegal, s. 35 of the terms of the Conciliation Board Agreement of 9th February, 1931, which regulated the position, prohibiting variation of such customs, etc., existing on 2nd September, 1915, without mutual agreement. Suitable injunctions were granted.

In *North and South Insurance Corporation Ltd.* v. *National Provincial Bank, Ltd.* (*The Times*, 7th November), it was held that a document partly written and partly printed with the direction "pay cash or order" was not a cheque for want of a specified payee; that in construing the document the printed part "or order" must be rejected in favour of the written word "cash" and that the document was in effect a good direction to pay bearer. An action against the bank, which had obeyed the plaintiffs' directions and had paid the money to the person whom the plaintiffs desired to have it, accordingly failed.

In *Coles* v. *Odhams Press and Another* (p. 860 of this issue), it was held that a crossword competition which in some of its spaces admitted of alternative words in the sense that two or more words would fit them was on the face of it a lottery within the meaning of the Betting and Lotteries Act, 1934, and the case was sent back to the magistrate on that footing. The respondents, the Lord Chief Justice observed, would have an opportunity of calling evidence in support of their case, that stage not having been reached at the original hearing.

In *Drages Ltd.* v. *Owen and Another* (*The Times*, 8th November), the question arose concerning the termination of a hire-purchase agreement "by written notice sent (by post or otherwise) to or left at the hirer's last known address" and it was held, in circumstances which need not detain us, that termination was effected from the time when a letter, sent in accordance with the above clause, was put in the post, and not from the time when it was delivered.

Referring a Cause to an Official Referee.

Since *Mayhead* v. *Hydraulic Hoist Co. Ltd.* [1931] 2 K.B. 424, it is clear that a judge has power to order a case to be tried by judge alone or to refer it to an official referee, at his own instance, after hearing the parties, without any summons or notice and even without the application or assent of either of the parties. There is discretion to refer a cause to a referee in the cases specified in s. 14, Arbitration Act, 1889, re-enacted by s. 89 of the Supreme Court of Judicature Act, 1925. These cases are: (*a*) if the parties consent; (*b*) if "prolonged examination of documents" or any "scientific or local investigation" makes such a course requisite; and (*c*) "if the question in dispute consists wholly or in part of matters of account." In these cases there is jurisdiction, and the Court of Appeal will be very slow to interfere with the exercise of the discretion of the judge below.

In *Mayhead's Case* there was a claim for damages occasioned by fraudulent misrepresentation, negligence and breach of warranty in the sale of a motor vehicle. A system of fraud was alleged and a large number of technical defects were put forward. An order had been made for trial by judge and common jury. By a subsequent order a special jury was granted at the defendants' instance. The case was third in the day's list when Horridge, J., having regard to the technical particulars and the scientific investigation required, of his own motion ordered the case to be transferred to the non-jury list. He was upheld by the Court of Appeal.

"In my view," said Scrutton, L.J. (at p. 431), "a judge cannot be compelled to try a complicated case in a way in which, in his opinion, reasonably exercised, justice cannot be done between the parties . . ."

"The Court of Appeal will be slow to interfere with the exercise of the judge's discretion unless it is clear that there are no grounds for exercising it in the manner complained of" (at p. 432).

Slesser, L.J. (at p. 441), enumerated certain cases in which a higher court declined to interfere.

The Court of Appeal, on 30th April, 1935, similarly declined to interfere with an order made by Horridge, J., whereby he referred to an official referee a New Procedure action—*Singer* v. *Badams (1922) Ltd.*

The plaintiff claimed that he was verbally appointed "the sole London agent" of the defendants for the sale of children's dresses, and that it was a term of the engagement that there should be no trial period, but that the agency should be subject to six months' notice, or, alternatively, a reasonable notice, viz., a season's notice, which was six months. At the same time the defendants agreed to release one Williams, a representative who should join the plaintiff as his traveller. Subsequently, the defendants revoked the agency without notice, and the plaintiff claimed damages for breach of contract in unlawfully dismissing him from the agency without notice; an account and payment of commission accrued due; an account and payment of commission on all London orders booked during the season by the defendants' customers; and damages for unlawfully inducing Williams to leave the plaintiff and rejoin the defendants as their new London agent. Since the delivery of the statement of claim the commission accrued had been paid. The defence, *inter alia*, was that the agency was revoked by mutual consent, or, alternatively, was lawfully revoked. Horridge, J., referred the action to an official referee and appeal was brought from this order to the Court of Appeal, by its leave.

Reliance was placed upon the cases cited in the notes to the *Annual Practice*, 1935 (at p. 2509), and it was submitted that the matter of account was subsidiary. First, this would not arise unless the judge found for the plaintiff, and secondly, the account could be agreed before the trial and (in any event) it was not the substantial issue. The real issue was: What were the terms of the contract, and was notice an implied term? There was nothing in writing and this was a matter of evidence, proper to be decided by a judge. It was admitted that the judge had discretion to refer this case, for the question did consist "in part of matters of account," but it was said that since the account was subsidiary, the judge had wrongly exercised his discretion. *Case* v. *Willis*, 8 T.L.R. 610, was relied upon, the effect of which is thus stated in *Annual Practice, ibid.*:—

> "Where there is a preliminary question to be decided as to the liability of the defendant, the action should not be referred under this section. If in such a case it appears at the trial that there are questions of account, etc., which require prolonged investigation, the judge can order a reference for inquiry and report under s. 13 (Sc. Arbitration Act, 1889)."

Although the *Annual Practice* cites *Mayhead's Case* in the notes to Ord. 36, r. 2 (at p. 599), that case is not cited in the notes to s. 89, and (it is respectfully submitted) this omission gives a misleading colour to the guiding principle, viz., the judge's discretion. The judge is entitled to refer a case containing a matter of account even though the account is incidental or subordinate, and even though there is a preliminary question as to the liability of the defendant. This, it is respectfully submitted, is the law, and the point is respectfully put for the learned editors to consider in the 1936 edition.

The Court of Appeal (Slesser, Roche, L.JJ., Swift, J.) dismissed the appeal, referring to the decision and the dicta in *Mayhead's Case*. It may be (it was said) that had application been made, the case may have been thought fit for the ordinary (non-jury) list; the claim for unlawfully inducing the traveller to leave sounded in tort. But in citing authorities under the section one had to be careful not to cite authorities which referred to the corresponding repealed clause (Judicature Act, 1873, s. 87) where the words "*prolonged* examination of documents or accounts" were used. Under the re-enacted section there was jurisdiction if *any part* of the action involved accounts and there was no ground in this case for disturbing the exercise of the judge's discretion.

Deductions from Wages.

An important point upon the power to make deductions from wages and the scope of the Truck Acts came before the House of Lords in *Penman* v. *Fife Coal Co. Ltd.* (1935), 51 T.L.R. 494; 79 Sol J. 478, on appeal from the Court of Session. The appellant was employed as an oncost worker by the respondents who deducted from his weekly wages the rent and rates payable to them by the appellant's father, who occupied a house belonging to the company. The appellant, who had expressly agreed that the deductions should be thus applied, now sued for their recovery under ss. 3 and 4 of the Truck Act, 1831. Section 3 provides that—

> "The entire amount of the wages earned by and payable to any artificer . . . in respect of any labour by him done in any such trade, shall be actually paid to such artificer in the current coin of this realm, and not otherwise; and every payment made to such artificer by his employer, of or in respect of any such wages, by the delivering to him of goods, or otherwise than in the current coin aforesaid, . . . shall be and is hereby declared illegal, null and void."

The respondents contended that the deduction was outside the section and alternatively pleaded a personal bar on the basis of *mora* and acquiescence. Upon the first ground they cited in particular the case of *Hewlett* v. *Allen & Sons* [1892] 2 Q.B. 662 and [1894] A.C. 383, where the servant upon entering the respondents' service agreed to join a sick and accident club, and to pay to it a weekly subscription. With the servant's consent, the employer deducted the amount from her wages and paid it over to the club. It was held by the Court

of Appeal that the deduction itself was illegal but that the consent provided the employer with a successful defence in the nature of a set-off. The House of Lords, however, held that such deduction was outside the scope of the section. The servant's nomination of a third party to receive definite sums from the employer must amount, upon the ordinary principles of agency, to payment to herself. Lord Watson, at p. 394, summarised the view of the House that "the contributions advanced by the respondent firm, on behalf of the appellant, were substantially equivalent to payments made by them to the appellant herself, in current coin within the meaning of the Act." In the *Penman Case*, however, "there was no payment at all, whether in current coin or otherwise by the respondents to anyone." In answer to the view, exemplified by Lord Hunter in the Court of Session, that the employer there was also allocating money under the servant's mandate, even if only to himself, Lords Macmillan and Wright adopted Bowen, L.J.'s words in *Hewlett's Case, supra*, at p. 666, that "the employer cannot, for the purpose of compliance with the statute, be both payer and payee. To hold otherwise would be to make the Statute idle." The test appears to be whether the employer derives any benefit from the deduction which is contrary to "a cardinal object of the Truck Act." In *Hewlett's Case* the employer did not benefit, while in the *Penman Case* he obtained rent for himself. The distinction is set out by Lord Macmillan at p. 496. There is "all the difference in the world between the case where the workman directs his employers to pay part of his wages to a third party and the case where the workman assents to his employers retaining part of his wages for their own behoof, whether in discharge of a debt due to them by the workman himself or in discharge of a debt due to them by some third party."

This is supported by *Williams* v. *North's Navigation Collieries* (1889), *Ltd.* [1906] A.C. 136, where the plaintiffs sought a declaration that the defendants had illegally deducted from their wages sums equivalent to judgment debts due to the defendants. Such deduction was held illegal. Bowen, L.J.'s dictum, *supra*, was accepted by Lord Davey, who distinguished *Hewlett's Case* on the ground employed in the present case.

The respondents further contended that even if the deductions were illegal, null and void, the appellant was barred from their recovery on the ground of acquiescence and delay. Reliance was placed upon dicta in *Hewlett* v. *Allen, supra*, and *Williams' Case, supra*. Section 5 of the Act deprives the employer of certain rights of set-off in an action by the servant for recovery of wages, and Bowen, L.J., concluded in the former case at p. 668 that beyond these restrictive lines of "tutelary shelter . . . all legal and equitable rights of set-off, and all legal and equitable defences other than payment are still left open in any civil action to the employer." This view was approved by the House of Lords in *Williams' Case, supra*, where it was emphasised that such defence of set-off does not permit the employer himself to deduct the debt from the wages. "Set-off outside the court," said Lord Davey at p. 141 in the latter case, "means nothing more than a claim of deduction and retention," and is not contained in ss. 23 or 24, which permit certain strictly defined deductions as "particular exceptions to the generality of the law." It is for the workman's protection that this distinction is made between deduction and set-off in an action "where the amount and propriety of it could be impartially investigated": *ibid.*, p. 142. In both the above cases, the dicta were *obiter*. In *Hewlett's Case* the judgment of the House of Lords that the deduction was legal made the view of the Court of Appeal on the point of set-off immaterial, and the dicta in *Williams' Case* were also unnecessary to the decision because only a declaration of illegality was sought and no recovery of the deductions claimed. These dicta were distinguished in the present case, where the defence was grounded, not on set-off, but on personal bar, which "in this connexion is a Scottish doctrine . . . to be decided by the law of Scotland," per Lord Alness at p. 498, who agreed with the view of Lord Macmillan at p. 497. "I cannot see how a party by acquiescing in a nullity can give it validity for purposes of defence. A nullity cannot be ratified, for there is nothing to ratify."

Nothing was said to contradict the view, which is submitted to be good law, that an employer's right of set-off, while not enforceable by deduction from wages, remains a good defence to an action by the servant to recover wages due.

Company Law and Practice.

Sur-tax on Undistributed Income of Companies.

THE provisions of s. 21 of the Finance Act, 1922, are, as its opening words avow, designed to prevent the avoidance of the payment of sur-tax (or super-tax, as it was then called) through the withholding from distribution of income of a company which would otherwise be distributed. Before considering what these provisions are, it would first be convenient, I think, to see to what companies the section applies. Sub-section (6) of s. 21, as amended by s. 31 (3), Finance Act, 1927, supplies us with the answer :—

> "This section shall apply to any company which is under the control of not more than five persons and which is not a subsidiary company or a company in which the public are substantially interested."

And we are then supplied with information enabling us to apply this description of a company which is within the terms of the section to particular facts. Thus, "under the control of any persons" means "where the majority of the voting power or shares is in the hands of those persons or relatives or nominees of those persons, or where the control is by any other means whatever in the hands of those persons"; and this is further elucidated by a definition for this purpose of the expressions "relative" and "nominee," the latter meaning "a person who may be required to exercise his voting power on the direction of, or holds shares directly or indirectly on behalf of another person." Enlightenment on what constitutes a holding "indirectly on behalf of another person" is not forthcoming. There still remain the phrases "a subsidiary company" and "a company in which the public are substantially interested"; the former, for the purposes of s. 21 of the 1927 Act, is a company, the control of which, by reason of the beneficial ownership of shares therein, is in the hands of a company to which the section does not apply; while the public are substantially interested in a company if shares of the company (not being shares entitled to a fixed rate of dividend) . . . "carrying not less than 25 per cent. of the voting power have been allotted unconditionally to, or acquired unconditionally by, and are at the end of the year or other period for which the accounts of the company have been made up . . . beneficially held by the public (not including a company to which the provisions of the section apply) and any such shares have in the course of such year or other period been the subject of dealings on a stock exchange . . . and the shares have been quoted in the official list of a stock exchange."

Although these provisions for the ascertainment of the companies falling within the section are somewhat elaborate and complicated, their application to the facts relative to a particular company is not, I think, in general, a matter of great difficulty; it will be seen at once that a great number of companies, including most public companies, are not within the section at all. Assuming, however, that we have a company which falls within the definition—say, a private company which is not a subsidiary company and the control of which is clearly in the hands of not more than five persons—what are the material provisions of the section which operate to prevent the avoidance of sur-tax by the company's withholding its income from distribution among its members? By s. 21 (1), where it appears to the Special Commissioners that the

company has not within a reasonable time after the end of its financial year " distributed to its members in such manner as to render the amount distributed liable to be included in the statements to be made by the members of the company of their total income for the purposes of super-tax, a reasonable part of its actual income from all sources " during the financial year, the Commissioners are empowered to direct that for purposes of assessment to super-tax the company's income shall be deemed to be the income of the members and the amount of such income shall be apportioned among the members. There then follows a proviso which requires the Commissioners, in determining whether any company has or has not distributed a reasonable part of its income, to have regard to the current requirements of the company's business and to such other requirements as may be necessary or advisable for the maintenance and development of that business.

To complete this part of the picture we must turn to s. 31 (1) of the Finance Act, 1927, which provides that, for the purposes of s. 21 (1) of the 1922 Act, certain sums are to be regarded as income available for distribution among the members of a company and not as having been applied or being applicable to the current requirements of the company's business or to such other requirements as may be necessary or advisable for the maintenance and development of that business. Such sums are of two kinds : firstly (in effect), any sum applied or to be applied out of income in or towards payment for the business or property which the company was formed to acquire or first acquired, and secondly, any sum applied or to be applied for any fictitious or artificial transaction.

The recent case of *Montagu Burton Ltd.* v. *Inland Revenue Commissioners*, 152 L.T. 8, illustrates the working of s. 21 (1) of the 1922 Act, and also the extent of the protection given by the proviso thereto ; the supplementary provisions of s. 31 (1) of the 1927 Act were not material and need not, I think, be again referred to. The facts in that case in their simplest form were these : The company (which was a company clearly falling within s. 21 of the 1922 Act), had during the financial year in question made a net profit of some £370,000, and the dividend declared exhausted £45,000 of that sum. So far there was a *primâ facie* case of withholding from distribution a reasonable part of the company's income. But during the same period there had been an expenditure by the company on fixed assets, increase in stock and increase in book debts of over £630,000, and such expenditure was shown to be in accordance with the company's policy for over ten years of development and expansion. The company relied on the proviso to s. 21 (1) of the 1922 Act, and said that this expenditure was made to meet current requirements of the company's business, and requirements which were necessary and advisable for the maintenance and development of that business : though it was conceded that the company could have legally made further distribution of profits by way of dividend, and that it had assets available, out of which such dividend could legally have been paid. The Commissioners found that the company had not within a reasonable time distributed a reasonable amount of its income within the meaning of section 21, and for the purposes of sur-tax directed an apportionment of the income among the members. The company appealed against the finding on the ground that there was no evidence on which the Commissioners could come to this determination. The appeal was dismissed by Finlay, J., and by the Court of Appeal. Lord Hanworth pointed out that whilst the proviso to s. 21 (1) entitled a company to excuse itself by pointing to the current requirements of the company's business and the requirements necessary for its maintenance and development, and to that extent a company could cut down what might still be deemed to be available for dividend, yet it did not negative the fact that the company had not distributed a reasonable part of its income. There was the evidence that there had been no such depletion of capital as would render it impossible to make a distribution of dividend, and that it was not necessary to replace capital before a dividend could have been distributed. Romer, L.J., said that it was not possible for the company, any more than it was possible for any company with large financial commitments, to say that any particular item of expenditure was derived from any particular item of incomings ; in fact, in this case the expenditure was made out of money borrowed from the bank. But " even assuming that the company could show that during the year in question it kept a separate account of revenue receipts and revenue payments, and all revenue receipts were paid into a separate banking account, and all revenue payments were made by cheques drawn on that separate banking account, so that they could say, and say truly, that the money spent upon these requirements was drawn out of money received on revenue account, it still does not follow that in the end these expenses are going to be thrown on revenue. At most it can be said that the money has been temporarily taken out of revenue, and it is for the directors to determine at the time when they have to consider the question of what they will do with their profits, whether the sum so temporarily taken out of revenue is to be permanently allocated to revenue so as to capitalise the payments—that part of the revenue—or is to be taken out of capital assets."

The learned lord justice further pointed out that at the time when part of the expenditure was incurred it might well be that no realisable profit was in the company's hands at all. The point of time to be considered was not the point of time at which the expenditure was incurred, but the time when the directors had to determine upon a distribution of the year's profit as dividend. And in this case there were not at that time any liabilities to speak of, and there were no business requirements to take into consideration because (in fact) the business had then been sold to a new company. I would also draw attention to the illustration given by Romer, L.J., on p. 17 of the report, of the sort of case in which the decision of directors that realised profit should be capitalised for the purpose of meeting current and other requirements of the business of the company would be accepted.

The various provisions for the mode of assessment and collection of sur-tax under s. 21 of the 1922 Act, and for the procedure for the determination of the question whether or not a company has withheld its income from distribution are hardly proper material for this column ; but I would refer those of my readers who are interested in these aspects of the case to s. 21 itself, the First Schedule of the Finance Act, 1922 (as amended by s. 31 (7) (8) of the 1927 Act) and s. 18 of the Finance Act, 1928. Section 31 (4) of the 1927 Act is, however, of some general interest. That sub-section provides that where an order has been made or a resolution passed for winding up a company to which s. 21 of the 1922 Act applies, the income of the company for the period from the end of its last financial year to the date of the winding-up order or resolution, as the case may be, is to be deemed to be income of that period available for distribution to members of the company. The decision in *H. Collier & Sons Ltd.* v. *Commissioners of Inland Revenue* [1933] 1 K.B. 488, shows that the effect of that sub-section is that if a company at a date subsequent to the close of its financial year agrees to sell its assets and undertaking, and the agreement provides that as from the date of the close of its financial year it shall be deemed to be carrying on the business on behalf of the purchaser, the company's income from the end of its financial year down to the date of its winding up is still liable in a suitable case to be deemed for the purpose of assessment to sur-tax income of the members of the company. It would appear also from that decision that the whole of such income can be the subject-matter of a direction of the Commissioners under s. 21 of the 1922 Act, the limitation to a reasonable part of the income having no application to the income for a period ending on the date of a winding up order or resolution.

A Conveyancer's Diary.

Building Society's Mortgage—Taking over Defaulting Properties.

My attention has been called to an article in *The Building Societies' Gazette* which raises an interesting question especially as the writer of the article (of whose identity I am ignorant) disagrees with what he states to have been the opinion, obtained by a well-known building society, of counsel (of whose identity I can only conjecture).

I may say at once that I think the article expresses quite clearly what the law on the subject is. I am not, however, so satisfied as the writer appears to be that there is no way out of the difficulty with which his able contribution to our contemporary deals.

The point arises when a builder takes over property of a defaulting borrower from a building society. The method adopted, as stated by the writer in *The Building Societies' Gazette*, is that " the property is sold by an ordinary agreement to the builder," which, I suppose, means that the builder agrees to purchase the property. Then the builder mortgages the property to the society by a deed which recites that he is entitled in equity. The society lends the builder sufficient to enable him to pay off the original mortgage.

The effect of that transaction, it is said, is that the original mortgage is paid off and the society does not need to show in its books that the property is in possession or that the mortgagor is in default.

Now, under s. 116 of the L.P.A., 1925, the legal term of years vested in the society, by virtue of the original mortgage, becomes merged automatically upon the mortgage debt being discharged. Consequently, the society is left with nothing but an equitable term. Counsel apparently thought differently. He says : " I do not regard the security as an equitable one, the society holds as part of the security the legal term of 3,000 years and can convey the legal fee simple to the purchaser," and further, " the builder as equitable owner in fee simple can create an equitable term of 3,000 years."

The objection taken to that is that of the first mortgage, that the society is placed in the position of making two separate advances upon the same property, namely : (1) a legal mortgage from the defaulting borrower ; and (2) an equitable mortgage from the purchasing builder. Whilst it could hardly be said, as I think, that the society was advancing money upon a second mortgage, the first mortgage not being vested in the society, and so infringing the provisions of s. 13 (1) of the Building Societies Act, 1894, yet it might be that the society would have advanced more than the total value of the property and so a liability would be cast upon the directors. I do not think that there is much in that point, for it is obvious that the original mortgage must, in such a transaction, be repaid out of the sum advanced to the purchasing builder. That seems to be admitted by the writer in *The Building Societies' Gazette*, but then, he says, if that be so, the legal term which was vested in the society has become extinguished under s. 116 of the L.P.A.

There is a good deal to be said for the contention so put forward, but the writer overlooks the fact that the power of sale under the original mortgage may (in fact will), so far as a purchaser is concerned, continue, even though the legal term of years may have been extinguished. The writer says " if the society is not at the time of conveyance to the builder possessed of a legal term of years, but only, as I contend, of an equitable term of years, how is it in a position to convey to the builder or his nominee a legal estate ? " The answer to that is that whether the society has any legal term of years or not it can convey the legal estate in fee simple. The estate which a mortgagee can convey is not the estate which is vested in him but the estate which is vested in the mortgagor—that is one of the curious points of the 1925 legislation.

Perhaps I may, in passing, refer to the fact that one of the reasons given for vesting in a tenant for life the fee simple at law was that it was an anachronism that a tenant for life should be able to convey an estate which is not in fact vested in him. So he was given the fee simple. Yet, by the new law regarding mortgages, a mortgagee was given the power to convey an estate which could never be vested in him, namely, the whole estate of the mortgagor.

To return to the article in *The Building Societies' Gazette* —I venture to agree in the main with the writer, and to express the view that the learned counsel from whose opinion he quotes for once in a way made a slip. I cannot, however, take such a pessimistic view as the writer of the article, who appears to despair of seeing any way out of the difficulty. I should have thought that if a trifling sum (say five shillings) were left unpaid on the original mortgage, that would solve the problem and would not involve the leaving on the books of the society a defaulting account of more than a negligible amount. There may be some objection to that, but at present I do not see it.

The whole question really shows how unfortunate the provisions of s. 116 of the L.P.A. are. It must often happen that the mortgage money has become at some time actually paid off (for example, in the case of a mortgage to a bank to secure an overdraft) and so the legal term vested in the mortgagee has become charged—but, after all, as I have said, that does not affect a purchaser from the mortgagee who is not concerned to enquire whether there is any money still owing upon the security and who is not, in fact, taking an assignment of the extinguished mortgage term but of the whole estate of the mortgagor whether it be in fee simple or for a term of years.

Landlord and Tenant Notebook.

Enforcement of Covenants to Restrict Noise.

Most covenants designed to preserve amenities contain some reference to noise ; the expression " noisy or noisome business " is a familiar one. There is much difference in meaning between the two adjectives ; but possibly they were first used by a draftsman with a taste for alliteration, who thought they would sound well in a phrase which also contained "nuisance," " annoyance " and " noxious."

But, throughout the centuries, very little play has been made with the particular part of the covenant which deals with noise. The reasons are, I think, threefold. First, that far more injury has been done to amenities by factors operating on senses other than the hearing ; secondly, that the deleterious effect of what noise there was was not appreciated ; and thirdly, that it was difficult to convey or reproduce to a court of law the amount of noise complained of.

Of recent years, science has changed all that. Several sets of men of science have invented devices which save labour or promote pleasure but emit much noise. Another set has blamed noise for nervous disease and inefficiency ; and a third set has produced instruments which measure noise.

These changes may well affect the authority of older decisions as well as the method of dealing with new grievances. It will be seen that old authorities, when they deal with nuisance generally, say comparatively little about noise. Thus, the examples given in Comyn's Digest of causes of an " Action upon the Case for a Nuisance," include swine-sty, lime-kiln, dye-house, tallow-furness, brew-house, smelting-house and smith's forge ; the last two only can be considered objectionable by reason of noise. Dealing with non-actionable matters, the writer says : " But an action upon the case does not lie upon a thing done to the inconvenience of another . . . If a man set up a school so near my study, who am of the profession of the law, that the noise interrupts my studies."

Decided cases show likewise that evidence has been directed mainly to the matter of complaints other than noise. In *Gutteridge* v. *Munyard* (1834), 7 C. & P. 129, a lease forbade any noisome or offensive business; the landlord covenantee alleged that the following had been carried on: fishmonger, dyer, butcher, ass-keeper, cow-keeper and pig-killer; but the witnesses spoke of smells and of vermin rather than of noise.

Covenants, too, which specify particular businesses as well as imposing general prohibitions show that more attention has been paid to unpleasant smells than to loud noises. One relied on in *Cleaver* v. *Brown* (1887), 4 T.L.R. 27, names the businesses of a catgut spinner, hog skinner, boiler of horseflesh, soapmaker, melter of tallow, smith, farrier, tinman, victualler, beerhouse or beershop keeper, fried fish shop, tripe dealer and coffee or eating-house keeper.

A further fact is that covenantees have, when noise has been objectionable, been loath to refer to it for fear of being laughed out of court. The plaintiff in the last-mentioned case asked for an interim injunction against the carrying on of a butcher's business; such business not being among those specified, he invoked the general part of the covenant—any other offensive, noisy or noisome trade or business . . . nor anything that might be a nuisance or annoyance to the plaintiff or the neighbours—but Kekewich, J., declined the relief sought, and it is noticeable that nothing was said about noise.

The difficulty is most aptly illustrated by the report of *Gaunt* v. *Finney* (1872), 8 Ch. App. 8, though that case was an action for nuisance and not a claim for breach of covenant. The plaintiffs complained of noise and vibration from a silk mill adjoining their dwelling-house; four years ago, the defendant had substituted steam for hand power. In his carefully considered judgment, Selborne, L.C., said: "A nuisance of this kind is much more difficult to prove than when the injury complained of is the demonstrable effect of a visible or tangible cause, as when waters are fouled by sewage, or when the fumes of mineral acids pass from the chimneys of factories or other works over land or houses, producing deleterious physical changes which science can trace or explain; but nuisance by noise . . . is emphatically a question of degree. If my neighbour builds a house against a party wall, next to my own, and I hear through the wall more than is agreeable to me of the sounds from his nursery or his music-room, it does not follow . . . that I can bring an action or obtain an injunction." And later: "Those who compare the noise which they heard to-day with the noise which they heard months or years ago are witnesses (within certain limits) to impressions upon the mind rather than to facts. Those who speak of the manner in which the engine and machinery have been worked, and the business of the mill carried on, speak of facts, and not of impressions on the mind."

In the leading case of *De Soltau* v. *Held* (1851), 2 Sim. N.S. 133, it is true that the plaintiff succeeded in an action for nuisance by church bells, but if his verbal evidence was in language which described rather than defined ("impossible for me and my family to read, write or converse") there was real evidence in the shape of the weights and dimensions of the eight bells.

In *Jenkins* v. *Jackson* (1888), 40 Ch. D. 71, a claim for breach of quiet enjoyment and nuisance, dances held on the floor above being the grievance, the judgment could only describe the noise as "considerable"; in *Frost* v. *King Edward etc. Association* [1918] 2 Ch. 180, Eve, J., said that the evidence as to noise was "much exaggerated."

Now the "Encyclopædia Britannica" declares that a rigid definition of "noise" is impossible, adding that, by analogy with "dirt," it has been called "sound out of place"; but the "New English Dictionary" says that "noisy" means "making or given to making a loud noise"; and it is of course more often the volume than the nature of noise which is objected to and which is aimed at by covenants in leases. And it seems reasonable to suppose that in the near future, instead of calling witnesses to describe what Lord Selborne dismissed as impressions on their minds, covenantees will be able to adduce expert evidence in the shape of scientists producing audiometer readings. It is an easier task to cross-examine an embittered neighbour who says that noise has been terribly loud or very considerable than it will be to obtain admissions from an expert soberly stating the number of decibels recorded. (I see that the Ministry of Transport has introduced a new unit of measurement, to be called the "phon," for motor engine purposes; I do not know why.) Further this makes it possible for a landlord anxious to let flats to lovers of quiet to limit his tenants' wireless sets, vacuum cleaners, and refrigerators to so many decibels.

Our County Court Letter.

THE RESTRICTIVE COVENANTS OF HAIRDRESSERS.

In the recent case of *Grimmer* v. *Pyle and Another*, at Lincoln County Court, the claim was for an injunction and damages for the breach of an agreement that the second defendant (the daughter of the first defendant) would not at any time within five years of the expiration of the agreement engage in the business of a ladies' hairdresser in the City of Lincoln without the written consent of the plaintiff. The second defendant had nevertheless taken another situation, without such consent, the defence being that the above covenant was too wide and, therefore, unenforceable. His Honour Judge Langman observed that restrictive covenants were usual in the hairdressing trade, but there was a thin dividing line between the desire to prevent competition and the keeping together of a trade connection. The enforceability of such covenants, therefore, did not depend merely upon whether the employee, after leaving a firm's employ, had come into contact with some of its customers. There was no evidence of betrayal of the plaintiff's trade secrets, and such evidence must be rare, in view of the number of hairdressers' shops at the present time. The above agreement was aimed at preventing competition, rather than maintaining a trade connection, and it went further than was necessary for the protection of the plaintiff. Although the conduct of the defendants was not approved, judgment was given in their favour, with costs, and the interim injunction was dissolved. See the report of the previous proceedings in the "County Court Letter" in our issue of the 28th September, 1935 (79 Sol. J. 693).

PROCEDURE IN ASSAULT CASES.

In a recent case at Huntingdon County Court (*Yardy* v. *Greenwood*) the claim was for £50 as damages for assault. At a previous hearing the evidence appeared to disclose the existence of a felony, and the action was stayed, pending a prosecution. It transpired, however, that the alleged offence was only a misdemeanour (and not a felony) and was no bar to a civil action. At the resumed hearing the plaintiff's case was that, in preventing the defendant from retrieving a pheasant on his (the plaintiff's) land, he (the plaintiff) had been severely injured by the defendant. The latter denied these allegations, and contended that the injuries were mainly due to the plaintiff having previously fallen over the handles of his plough. His Honour Judge Farrant held that, if there was any collision between the parties, it was in the nature of a rough and tumble, and did not constitute an assault. Judgment was therefore given for the defendant, with costs.

It was laid down in *Smith* v. *Selwyn* [1914] 3 K.B. 98, that no action can be brought, in respect of a tort which is also a felony, until the defendant has been prosecuted. The rule is designed in the interests of public justice, in order to compel injured persons to fulfil their duty of prosecuting the offender,

instead of being satisfied with enforcing their private rights. As the rule is founded on public policy, the judge should stay the civil action, as it is unlikely that the defendant, having already been sued, will complain that he should also be prosecuted as a preliminary process.

VEGETARIANS AND HOTEL ACCOMMODATION.

In a recent case at Minehead County Court (*Fish* v. *Hines*) the claim was for damages for breach of contract, viz., failure to occupy rooms booked at the plaintiff's boarding-house. The plaintiff's wife had been informed by the defendant that he, his wife and two children were vegetarians, and rooms were booked for two weeks on that understanding, but were vacated after one week. The defendant and his wife gave evidence that, owing to the indifferent catering, they were obliged to find other accommodation. Although they explained the nature of their vegetarian dishes, the latter were not served in a reasonable manner, e.g., a salad was drenched in vinegar and the potatoes were hard and uneatable. Owing to overcrowding, people slept in the drawing-room and breakfast-room, and a bed was put up in the bathroom, which could not be used as such. The children were therefore sponged down in the kitchen. His Honour Judge Wethered held that neither reasonable service nor vegetarian food had been provided. Judgment was therefore given for the defendant, with costs.

Reviews.

The Electricity (Supply) Acts, 1882 *to* 1935. By Eoin C. Mekie, B.L., and Douglas H. James, M.A., LL.B., Solicitors, Edinburgh. 1935. Royal 8vo. pp. xvii and (with Index) 374. London: Eyre & Spottiswoode (Publishers) Ltd. 21s. net.

This is the first edition of a work for which a useful career can safely be predicted. It embodies a successful attempt to unravel the tangled skein of twelve Acts of Parliament and many statutory rules and orders, and the authors' skill in classification, analysis and lucid exposition has resulted in a codification which will be invaluable to practitioners in this field as well as to the engineer "on the job." Reference to the statutes is facilitated by marginal notes. Although the fewest possible references are made to case law, such important decisions as *West Midlands Joint Electricity Authority* v. *Pitt*, and *The Ministry of Transport* v. *Same* (1932), 48 T.L.R. 332 (settling the powers of the Minister to determine the pecuniary terms on which an electric line may be placed), and *McCoard* v. *Glasgow Corporation* (1935), S.L.T. 117 (that s. 23 of the 1922 Act does not direct reference to arbitration in a dispute as to whether or not any supply is or is not a "stand-by supply") are fully dealt with. The authors have rendered a service of the highest value to members of local government bodies and both branches of the legal profession.

Mr. Justice Avory. By Gordon Lang. 1935. Demy 8vo. pp. (with Index) 318. London; Herbert Jenkins, Ltd. 10s. 6d. net.

The aim of this book seems to lie somewhere between a portrait of a personality and a record of judicial history. The author's sketch of Mr. Justice Avory as a man is definite and clear, and, though he never delights the reader by a flash of inspired insight, his treatment is satisfactory and workmanlike. The account of the various trials in which the judge figured is, however, on a somewhat lower level. In most of the narrations, those dramatic cases just lack the magic touch that might bring them to life, though here and there, as in the description of the sentencing of Allaway, the author draws a fine vivid picture, in which the presence of the great judge is felt dominating the scene. Readable though it is, the lawyer who takes up this book must be prepared to judge it rather by lay standards. Certainly he will wonder by what literary lapse a saying of mighty Verulam comes to be attributed, at p. 32, to Vice-Chancellor Bacon.

Great Unsolved Crimes. 1935. Crown 4to. pp. 351. London: Hutchinson & Co. (Publishers), Ltd. 8s. 6d. net.

The lawyer must not set too fastidious a standard for this book because it is frankly produced, not for him, but for the layman at leisure. More than forty crimes are dealt with, each by a different author, and the compilers have taken a field wide enough to include within the category "unsolved" the Crowborough murder, the Thompson and Bywaters case and the crime of Dr. Crippen. Throughout the book violent death is generally the theme, and sometimes, in the solutions suggested, the authors display a keener sense of the dramatic than of the probable. Thus, in the chapter on the Peasenhall mystery, the theory of accident, now generally rejected, is set out with great confidence in a very ingenious reconstruction. Readability is obviously the aim of this collection, and this has been achieved in the highest degree without violence to accuracy in respect of any known fact, whatever latitude the authors may have allowed themselves in the matter of inference.

Books Received.

Golf from A to Z. By James Currie Macbeth. 1935. Crown 8vo. pp. xv and (with Index) 150. London: Putnam and Co., Ltd. 5s. net.

By Pacific Means. By Manley O. Hudson, Member of the Permanent Court of Arbitration. 1935. Demy 8vo. pp. vii and (with Index) 200. New Haven: Yale University Press. London: Humphrey Milford, Oxford University Press. Price $2.50.

Ward's Parliamentary Elections. Fourth Edition, 1935. By E. Bright Ashford, B.A., of the Middle Temple, Barrister-at-Law. Crown 8vo. pp. xxii and (with Index) 202. London: Butterworth & Co. (Publishers) Ltd.; Shaw & Sons, Ltd. 12s. 6d. net.

Lindley on the Law of Partnership. Tenth Edition. 1935. By The Hon. Walter B. Lindley, formerly a Judge of County Courts. Royal 8vo. pp. clxx and (with Index) 1206. London: Sweet & Maxwell, Ltd. £2 15s. net.

The Yearly Supreme Court Practice, 1936. By P. R. Simner, C.B., a Master of the Supreme Court of Judicature, Harold G. Meyer, of the Inner Temple, Barrister-at-Law, H. Hinton, M.B.E., and F. C. Allaway, M.B.E. 1936. Demy 8vo. pp. cccclxix and (with Index) 3066. London: Butterworth and Co. (Publishers) Ltd. £2 5s. net.

Appeals from the Decisions of Local Authorities. By H. Samuels, M.A., of the Middle Temple, Barrister-at-Law. 1935. Demy 8vo. pp. xvi and (with Index) 117. London, Liverpool and Birmingham: The Solicitors' Law Stationery Society, Ltd. 10s. 6d. net.

The Gold Clause. By Arpad Plesch, Dr. Jur. (formerly of the Hungarian Bar). 1935. London: Stevens & Sons, Ltd. 7s. 6d. net.

The Companies' Diary and Agenda Book. 1936. Edited by Herbert W. Jordan, Company Registration Agent. Fifty-third year of Publication. London: Jordan & Sons, Ltd. 4s. net.

The Practice Relating to Debentures. By Thos. Froude and Eric V. E. White, B.A., of Lincoln's Inn, and the South-Eastern Circuit, Barrister-at-Law. 1935. Demy 8vo. pp. xiv and (with Index) 141. London: Sir Isaac Pitman and Sons, Limited.

[All books acknowledged or reviewed can be obtained through The Solicitors' Law Stationery Society, Limited, London, Liverpool and Birmingham.]

To-day and Yesterday.

LEGAL CALENDAR.

11 NOVEMBER.—On the 11th November, 1897, Lord Esher, on his retirement from judicial office, was raised to the dignity of Viscount.

12 NOVEMBER.—On the 12th November, 1811, four native clerks in the treasury were tried at Bombay for attempting to murder the sub-treasurer, who had put a stop to systematic and extensive frauds long practised by the officials. They were found guilty, and, at midnight, the recorder pronounced sentence, condemning them to five years' imprisonment. Once every year they were to be placed in the pillory with labels descriptive of their offence, and twice they were to be publicly whipped through the bazar. Further, they were to be fined 10,000 rupees each and imprisoned till they paid the fine.

13 NOVEMBER.—Chief Baron Comyns, who died on the 13th November, 1740, has left behind two abiding memorials of his learning, his Reports and his famous Digest. In 1706, he took the coif, but he remained a serjeant twenty years before he was raised to the Bench as a Baron of the Exchequer. Later on, he passed to the Common Pleas, finally returning to his old court as its president. His Digest, which was not published till twenty-two years after his death, was hailed as the most accurate and comprehensive abridgment of the law yet written.

14 NOVEMBER.—In 1217, Martin de Pateshull was appointed a judge, and thereafter, until his death on the 14th November, 1229, he worked indefatigably. He was a glutton for work, and once a brother justiciar, appointed to go the York Circuit with him, wrote to the authorities begging to be excused, "for the said Martin is strong, and in his labour so sedulous and practised that all his fellows . . . are overpowered by the labour of Pateshull, who works every day from sunrise until night." In 1224, he had a narrow escape when a baron named Falkes de Breauté attacked the justices' itinerant. Though Pateshull escaped, one of his colleagues was captured, and only released by the King after a two months' siege of Bedford Castle.

15 NOVEMBER.—On the 15th November, 1603, Sir Griffin Markham and several others were tried at Winchester on a charge of high treason arising out of a conspiracy to place Arabella Stuart on the throne. They were all found guilty but one, and sentence of death was passed by Lord Chief Justice Popham. Markham, however, escaped with his life, for having been brought out on to the scaffold before Winchester Castle, he was just putting his head on the block, when the sheriff told him to rise and he was taken back into the great hall. He was then told that he had been spared by the King.

16 NOVEMBER.—On the 16th November, 1327, Walter Reynolds, Archbishop of Canterbury, died at Mortlake, mainly through fear of the spiritual censures with which the Pope had threatened him for irregularly consecrating a new Bishop of Exeter to please the Queen. No other ex-Chancellor has died from a similar cause. He is also said to have provided the only instance of one who having held the Great Seal of Lord Chancellor, subsequently held it as Lord Keeper.

17 NOVEMBER.—On the 17th November, 1672, it was announced that "His Majesty, reflecting upon the age and infirmities of Sir Orlando Bridgman, Lord Keeper of the Great Seal of England, hath thought fit to admit of his resignation thereof . . . and his Majesty willing to gratify the uninterrupted good services of the Earl of Shaftesbury . . . was pleased this day to give unto him the keeping of the said Great Seal, with the title of Lord Chancellor of England." Thus was a learned lawyer jockeyed out of his post by an incompetent, unscrupulous and ambitious politician.

THE WEEK'S PERSONALITY.

Lord Esher was the first judge, other than a Chancellor, for more than two hundred years, to reach the dignity of viscount. He enjoyed it for barely eighteen months before his death. Quite early in his career at the Bar, his extraordinary competence in mercantile and marine cases had brought him thorough recognition on the Northern Circuit and in the Courts at Westminster. He took silk fifteen years after his call to the Bar and soon led both the Court of Passage at Liverpool and the Court of Admiralty. In 1868, he became a Justice of the Common Pleas, and the Judicature Act, 1875, gave him the status of a Justice of the High Court. In 1876, he was raised to the Court of Appeal, and finally, seven years later, he was appointed Master of the Rolls. In law and politics his inclination was conservative. He was a strong judge, sometimes more strong than discreet, possessing a robust common-sense which inclined him to sweep aside technicalities when they stood in the path of substantial justice. This tendency brought him dangerously near uniting in himself the functions of judge and jury, for his standard of justice was, as he said, the general consent of "people of candour, honour and fairness." His judgments were colloquial and his impatience of prolixity sometimes led him to forget his dignity in altercations with persistent counsel. Nevertheless, he was a great judge.

HUNTING BEGINS.

November has seen the celebration of the centenary of the Heythrop Hounds, originally one with the Beaufort Hounds, but since 1835 a separate pack. The fox-hunting season opened with a reunion, when the Duke of Beaufort was invited to bring his hounds to the Heythrop country. It is a pity that his exalted duties kept away that fearless horseman Lord Roche, one of the keenest followers of the Heythrop Hounds and as great on the hunting field as in the courts. Too often the combination of sportsman and jurist is not so successful, even in Ireland. The aspirations of "Pether" O'Brien, C.J., to be accepted as a distinguished sportsman were always checked by the memory of a ludicrous action in which he had once figured as master of a pack of hounds, or rather a collection of dogs, which had devoured unheard of quantities of sheep in very amusing circumstances. The great Curran was no more distinguished in the hunting field, but he once produced an excellent pun there. Riding across the land of a man whom he had recently cross-examined severely, he was stopped by the owner, who said: "Oh sure, you are Counsellor Curran, the great lawyer. Can you tell me by what law you are trespassing on my ground?" "By what law did you ask," replied Curran, "it must be the *Lex Tally-ho-nis* to be sure."

ABSENT-MINDEDNESS.

"Characters" and eccentrics do not seem to flourish in the legal world to-day. No "silk" as absent-minded as Peter Burrowes, a famous Irish K.C. of the long dead past, known as "the Goldsmith of the Irish Bar," could now attain the eminence which he reached. There were scores of stories about his odd ways. For instance, he was so accustomed to shave before a looking-glass placed in a particular spot in his dressing-room that, when it was broken and removed, he still went to the same spot and performed his shaving, unaware that he had no looking-glass. Donelly, his old valet, used to tell how one day when his master was dressing for dinner, he missed one of his black silk stockings. "I have tried everywhere, Donelly," he said, "and I can't find it high or low." "Did you try your foot, sir?" asked the valet. "For I'm thinking you put the pair on one leg." The absent-minded "silk" examined his leg and found that he had actually put both stockings on the same limb. "Pon my word, you are right, Donelly," he exclaimed.

THE LAW OF PROPERTY ACTS, 1925.

By A. F. TOPHAM, Esq., K.C.

A Verbatim Report of the Fifth of a Series of Lectures Delivered to The Solicitors' Managing Clerks' Association.

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The President (Mr. S. H. Vere) : Gentlemen, I have much pleasure in asking Mr. Topham to resume his Lectures.

Mr. Topham : Mr. President and Gentlemen, there are still some matters connected with undivided shares which I think I ought to bring to your attention. You may remember that I referred you to a case of *Re Bridgett and Hayes' Contract* [1928] Ch. 163 ; 71 Sol. J. 910, where Mr. Justice Romer had decided that, where you find settled land and then a grant of probate is made to the general executors, you would be quite safe in taking a conveyance from those general executors, even though it afterwards turned out that there ought to have been a grant to the special executors in respect of settled land. It has been pointed out to me that doubts have been raised as to the correctness of that decision, and there have been some articles in The Solicitors' Journal raising doubts on the ground that the learned judge did not have his attention drawn to s. 110, sub-s. (3), of the Settled Land Act. However, the final article in The Solicitors' Journal seems to suggest that those doubts can be put at rest in a certain way, and in case you have been worried by those doubts, I suggest that you might read the article, which is in vol. 79 of The Solicitors' Journal, at page 243. It is a long and rather intricate question, and so I will not go into it in detail to-night ; but I may just say this, that in my view, and after reading that article, I feel quite convinced that you can safely purchase from personal representatives to whom a grant of probate has been made, even though you know from the document that the land was settled land prior to the death, whether you do that relying on the decision in *Re Bridgett and Hayes' Contract*, which I think is really quite sufficient for the purpose, or whether you further convince yourself by reading that article from which I think you can come to the same conclusion.

One question which I understand is rather puzzling some conveyancers with regard to undivided shares is : What is the position with regard to mortgages which existed on the lands before they came under the operation of the Act of 1925 ? The provisions of the Act are a little curious at first sight with regard to those incumbrances. Where there are mortgages or incumbrances on the undivided shares, that is to say, where one or more persons have mortgaged their shares, the position is pretty clear. In that case cl. 2 does not apply—that is the case where the individuals themselves become their own trustees—but otherwise you will find that the trustees for sale can sell the land, and the people who have mortgages on the undivided shares get similar charges over the proceeds of sale ; but where there were mortgages on the whole of the land —what is called the entirety of the land—at first sight it is a little surprising, because to take cl. 1, for instance, it says this : " If the entirety of the land is vested in trustees whether or not subject to incumbrances affecting the entirety, then the entirety shall vest free from such incumbrances " in the trustees of the trust for sale, except where the mortgages are " secured by legal terms of years." At first sight it is rather startling to see that, there being charges on the land, it is to vest in the trustees free from those charges in every case, except a mortgage, where there is a legal term. The position is, however, further explained by s. 35, which sets out what the statutory trusts are. The statutory trusts are to hold the land on trust for sale, and to hold the net proceeds or the land until sold upon such trusts as may be requisite for giving effect to the rights of the persons (including an incumbrancer whose incumbrance is not secured by a legal mortgage) interested in the land. It appears that under the statutory trusts the trustees for sale are to look after the interests of incumbrancers whose incumbrances are not secured by a legal mortgage. That makes it, I think, quite clear with regard to any equitable mortgages of the ordinary kind which were charged upon the land as a whole prior to the Act ; the trustees can sell free from those, and then out of the proceeds of sale they have to provide for those charges. But there are two rather puzzling things there : one is, you will notice that the trustees hold the land free from incumbrances where they are not secured by a legal term of years. Take the case of a charge by way of legal mortgage. You will remember that in a charge by way of legal mortgage you do not create a term at all, and you may have thought at first sight, reading that clause, that the trustees for sale would take free from such mortgages, which cannot have been intended ; but the answer is that a charge by way of legal mortgage could not have been created before the Act, so that there is not very much trouble about that ; but when you come to a charge created by deposit of title deeds, some difficulty arises, at any rate, at first sight. That is obviously not a mortgage secured by a legal term of years, and yet it can hardly have been intended that the trustees are to take the land free from the ordinary bank charge by deposit of title deeds. I am quite certain that was not the intention of the framers of the Act ; but that does not necessarily affect its construction. However, when you look at s. 13 of the Act you will see it is quite general : " This Act shall not prejudicially affect the right or interest of any person arising out of or consequent on the possession by him of documents of title relating to a legal estate in land." That general section seems to me to over-ride anything inconsistent with it, and although, therefore, the land is said to vest in the trustees on the statutory trusts free from incumbrances on the entirety, I think s. 13 over-rides that, and they would take the land subject to charges created by deposit of title deeds. That does not quite get over the whole difficulty that arises, because, assuming that they take subject to the charge by deposit, the question does arise—let us take the bank : Can the bank sell the property and convey the legal estate ? You may remember that in the ordinary charge by deposit of title deeds there is no power of sale unless one is either expressed or implied by having a memorandum of charge under seal. In either of those cases the bank appear to get a statutory power to sell, and under s. 104 of the Act the bank can convey the property sold for such estate and interest as may be the subject of the mortgage. So that there is a statutory power of sale. But then, even so, can the bank convey a legal estate ? There I think the Law of Property Act does create a difficulty, because it says that every power to convey land created by the Statute, not being a power vested in a legal mortgagee, operates only in equity. So that, although the power of sale of the mortgagee who is a legal mortgagee operates at law and he can convey a legal estate, and even convey a legal estate greater than he has got, any power of sale which is not vested in a legal mortgagee operates only in equity. So that it seems very doubtful whether a mortgagee by deposit of title deeds can convey a legal estate. The question was not entirely free from doubt, I think, before, and you will find in most of the bank forms, because banks always protect themselves very fully in their forms, a provision is put in in most of the memoranda which accompany charges by way of deposit, which either provides that the mortgagor shall, when called upon, execute any necessary powers of attorney, so that the bank can convey

under a power of attorney in his name, or sometimes it actually appoints the bank to be the attorney of the mortgagor to convey when exercising a power of sale. It seems to me that in future, having regard to the difficulties which arise on the power of sale having been turned into an equitable power, care should be taken to see that some provision is put into the memorandum of charge appointing the mortgagee to be the attorney of the mortgagor to convey the legal estate, if necessary. That is one difficulty which has been created by the Act in regard to these undivided shares. Sometimes, of course, it does happen, particularly in the years immediately after the passing of the Act, that the provisions of the Act have caused perhaps unnecessary complications. I was told of a case which occurred a little while ago where there was a very small house which was sold for a sum of about £200, I think, and when the title was investigated it turned out that as regards one of the floors the widow of a certain person was tenant for life with powers under the Settled Land Act, but there were no trustees of the settlement. As to the rest of the house, the property had vested in two daughters as tenants in common, so that they held that on trust for sale; but the garden had become vested in the Public Trustee, because certain persons had rights of access over it.

However, there are other cases which present a happier picture. In the case of partnership property, sometimes the new provisions save a lot of trouble. An instance of that occurred in the case of *Re Fuller's Contract* [1933] Ch. 652. There, land had been conveyed in 1892 to six persons as joint tenants in trust for them as part of their partnership estate. That was rather bad conveyancing, as you will recognise. It brought the trusts of the partnership on to the title, and anybody buying that land afterwards would know that these six persons, though joint tenants in law, held the property as part of the partnership assets, and you might have to inquire what the terms of the partnership deed were. However, by the 1st January, 1926, three of them had died, and there were therefore three persons holding as joint tenants in trust for themselves as partners, or whoever was entitled under the partnership deed as partners; and it was held in that case that those three persons, holding in trust for the partners, whoever they were, by virtue of the Act, held on the statutory trusts, and so could sell, and the purchaser need not inquire, and was not entitled to inquire, into the various trusts affecting the partnership. I mentioned just now the case of the garden which vested in the Public Trustee. That arises, as you will probably remember, when neither clauses 1, 2 or 3 of Part IV of the schedule apply. There the land vested in the Public Trustee. For instance, that applies if there are any charges on undivided shares, or if there are more than four persons beneficially interested. Very frequently that state of affairs is much simplified by the Acts of 1925. You sometimes find, and again this is rather slip-shod conveyancing, that land has been conveyed to some society or to some club, when that society is not in any way incorporated, and the conveyance to a club, for instance, would mean, I suppose, a conveyance to all the persons who for the time being are members of the club. Supposing the club wants to sell this property? I had a case once of a certain convent which was run rather on the lines of a club. If the convent or the club wants to sell, the answer to the problem in these days is this: There may be fifty or more persons who are beneficially interested, but, there being more than four, the property vests in the Public Trustee, and then persons interested in more than one-half can appoint new trustees. The Public Trustee cannot act unless he is requested to act by persons interested in more than one undivided half of the land or the income thereof, and the same persons—persons interested in more than one undivided half of the land or the income thereof—may appoint new trustees. One problem arose on that as to whether "persons interested" in one-half would include people interested as trustees for other persons, or whether you had to get in all the persons interested as beneficiaries; and it was held that "persons interested" included persons who are interested as trustees for somebody else. That was decided in the case of *Re Cliff Contract* [1927] 2 Ch. 94; 71 Sol. J. 389. The facts there were these: There was a deed of 1910; freehold lands were conveyed to William Cliff, Joseph Cliff, Walter Cliff and Stephen Cliff, four brothers, as tenants in common. Joseph and William died, each of them having devised his quarter share to trustees in trust for sale. Stephen was still alive. William had died also devising his quarter share to trustees in trust for sale. So that of the four shares, three were held by different sets of trustees in trust for sale to hold the proceeds in trust for a very large number of persons, Stephen being the only person absolutely entitled. It was held that Stephen and the three sets of trustees could join in appointing new trustees in place of the Public Trustee. That was followed in another case of *Re Hayward* [1928] 1 Ch. 367; 71 Sol. J. 845.

The provisions which were made to apply to tenancy in common in undivided shares were also extended to joint tenancy where persons were beneficially entitled as joint tenants. I am not quite sure why that was done. It seems to be rather unnecessary in one sense, because there was no difficulty in joint tenants conveying the land, and it is very seldom that you have a large number of joint tenants holding beneficially as joint tenants. As you know, joint tenancy nearly always exists in the case of trustees; but by way of making the Act consistent throughout it was also provided by s. 36 of the Law of Property Act that where a legal estate "not being settled land" is beneficially held for persons as joint tenants it shall be held by them on trust for sale, provided there are not more than four. Not much difficulty has arisen under that section, but there was one case where there was a dispute between the vendor and purchaser; that is in *Re Gaul and Houlston's Contract* [1928] Ch. 689. The facts were these: There were two persons who were joint tenants in fee simple, but the whole of the land was subject to a charge of £1,000 which had been created by a settlement. You will see that before 1926 the land was not settled; they were joint tenants in fee simple subject to a charge, but it was not settled land, and they therefore thought that the words "not being settled land" would apply to them, because the land was not settled land before the Act; and it was held, you may remember, in *Re Ryder & Steadman's Contract* [1927] 2 Ch. 62; 71 Sol. J. 451, in the Court of Appeal, that in the schedule "settled land" referred to what it was immediately before the commencement of the Act; and acting on that, one of them, because the other was a lunatic, appointed new trustees to hold the land on the statutory trusts under s. 36, and the new trustees thereupon entered into a contract to sell the land. The purchaser raised the objection that in the circumstances there were no statutory trusts, and these new trustees had been wrongly appointed, because s. 36 only applies to land not being settled land, and it was said that on the passing of the Act this land had become settled land because, although it was held by persons in fee simple, it was subject to a charge created voluntarily by a settlement, and came therefore under the new definition of a settlement. That case went to the Court of Appeal, and we tried in that case to apply the same ruling that had been laid down in *Ryder & Steadman's Contract*; but the Court of Appeal did not follow that case as applied to that section, and held that the land having become settled land by virtue of the Act, it was settled land within the meaning of s. 36, so that there ought to have been a vesting deed vesting the land in whoever was the person having the powers of a tenant for life, and the sale ought to be carried out by that person. It is a little puzzling to remember that for the purposes of the schedule, "settled land" means land which was settled land before the passing of the Act, whereas under s. 36 it may include land which was not settled land before the passing of the Act, but which has become so under the Act.

One of the letters I have had on the subject of these lectures raised a point about joint tenancy, and the question was this: Why is it necessary when you are conveying land to joint tenants, they being joint tenants also beneficially, to express certain greater powers, larger powers than they would have had as holding on the statutory trusts? You will find that in some precedent books on conveying land in that way to, say, three persons as joint tenants it is suggested that you should add a power to mortgage for any purpose, or to lease for any purpose, and I was asked, what is the object of that when the three persons are beneficially entitled and can do whatever they like? Of course, the idea of that is this, that the whole notion of vesting land in joint tenants on statutory trusts is to keep their beneficial interests, and any dealings with their beneficial interests, off the title. If they were simply holding on statutory trusts, they only have the powers of trustees for sale, which are the same as regards mortgages as those of the tenant for life; he can only mortgage for certain specified purposes. So you find in some of the books it is suggested that you add a general unlimited power for those trustees holding on statutory trusts to mortgage the land and lease the land without any limit. But that will not quite do, as it has been pointed out by certain astute conveyancers that those powers are void as to perpetuity, because there is no limit of time within which they can be carried out; and you will find in some of the later forms it is carefully provided that this power must only be exercised during the lives of the joint tenants and twenty-one years after the death of the survivor. That is rather a small point in a way, but it is perhaps an advantage to give these extra powers of mortgaging or leasing. If you do, in order to get away from the doubt as to the perpetuity rule, you should limit it to a life in being and twenty-one years.

There is one more small point on this question of undivided shares. There is a clause in the amending Act of 1926 which is somewhat intricate and difficult to follow, and has puzzled some of the judges a good deal. Fortunately, they have between them limited its application to rather a narrow scope and I think they limited it to meet the sort of point it was really intended to meet. I believe the alteration arose in this way: the late Sir Benjamin Cherry was very good at being ready to consider all sorts of amendments if he thought any injustice was being done in the Act; and it turned out that there was one rather important estate where there were two tenants for life holding as tenants in common, and after the death of those two tenants for life the land went to one person as tenant in tail, and after the death of that person, or subject to that, to another person as tenant in tail, so that the land became settled land in the ordinary way. But the existence of those undivided shares for the lives of the two tenants for life made it subject to a trust for sale, and it was thought rather inconvenient that there should be a trust for sale during those two lives, and that then it should come into settlement; and Sir Benjamin Cherry was induced as a consequence of that to put this amending clause into the Act of 1926. It runs something like this: Where there are two or more tenants for life entitled in undivided shares and after the cesser of all their interests the entirety of the land is limited so as to devolve together (not in undivided shares) they, that is the tenants for life, become joint tenants (but not so as to affect their beneficial interests) and they then constitute the tenants for life. The object of making them joint tenants is this, that when there are two joint tenants under the Settled Land Act, they can together exercise the powers of the tenant for life, but where there are two tenants in common for life, it is not settled land at all, and there is a trust for sale, and the trustees exercise the powers. It was therefore desired apparently in that case that these two tenants for life should be able to exercise the powers under the Settled Land Act, and that there should not be trustees for sale. When it came to applying that in practice, there were lots of cases where it looked as if that amendment might apply, but it has been limited by several decisions to the sort of case I was mentioning. It has been limited to cases where, after a tenancy in common for lives, the property devolves as a whole to one person at a time. It was decided in *Re Colyer's Farningham Estate* [1927] 1 Ch. 677; 71 Sol. J. 351, by Mr. Justice Tomlin; in *Re Higgs & May's Contract* [1927] 2 Ch. 249; 71 Sol. J. 761, by Mr. Justice Eve; and in *Re Barrat* [1929] 1 Ch. 336, by Mr. Justice Maugham. If I may give you the facts of the last-named case, I think it will be a sufficient illustration. There there was a provision that land should be divided among all the children of a certain person, with an ultimate gift to the last survivor of those children absolutely. So that in one sense you might say that during the lives of the children they took as tenants in common and afterwards it would devolve in the words of the Act "together not in undivided shares." But Mr. Justice Maugham limited it in the same way as it had been limited in those cases and held that the amending Act did not apply because it was not a question there of the land devolving after the termination of their interests because it went to the survivor before his interest had been determined. Accordingly, I do not thing you need trouble about that amending clause more than to remember that where there are, say, two or three tenants in common for their lives, and then at the end of their life interests the land is settled so as to go to one person at a time, it does not become land held in trust for sale, but those two or three tenants in common can act as together constituting the tenant for life.

The most unfortunate results of the rule about a trust for sale arising as connected with undivided shares come from the unexpected results of conversion. You know the rule of equity, "That which ought to be done is to be treated as done," and accordingly where there is a trust for sale of land in equity it is considered immediately to have been converted into personal property. That led to rather surprising results in one or two cases. In *Re Price* [1928] Ch. 579, Mr. Justice Clauson arrived at a conclusion which so far surprised everybody that he decided that the property was vested in a certain set of executors who were not represented before him, because nobody thought that they could possibly be interested. It was a curious case, and rather confusing, but it is worth following up to show what sort of slips you can find in the Act if you are not pursuing a very benevolent construction. It is not a thing likely to happen often. It was copyhold land, and there was a custom to entail, and there was also a custom of gavelkind, which, you may remember, gave the property to all the sons equally, or all the brothers equally, and not to the eldest. In 1832, 14 acres of this copyhold land had been surrendered to the use of one Elizabeth Price and the heirs of her body by a particular husband. Nobody ever barred the entail, so it went on descending under that entail. Elizabeth Price had three sons, David, Thomas and Richard, and so they became tenants in common in tail, and they were admitted as such. We need not trouble about David and Richard; I do not know what happened to them; but Thomas is the one we are interested in. Thomas, the second son, also had three sons, so that his share became divided again into three, and each of the three sons took one-ninth. One of those was Thomas John Price, who died on the 18th January, 1926, just after the Act; he missed it by eighteen days. He died intestate and without issue. He had one-ninth, and it was or had been up to the passing of the Act—up to within eighteen days—copyhold land held on the custom of gavelkind. Of course the Act converted that into freehold, and as it was a one-ninth share all the property being held in undivided shares was to be held on the statutory trusts, and somebody so held this land on the statutory trusts in trust to give effect to the interests of the persons entitled to the land. What Mr. Justice Clauson said was this; immediately the Act was passed this one-ninth was converted into personalty, and although the Law of Property Act enables you to create an estate tail, or rather

an entailed interest in personal property by the appropriate words, there is no provision in the Act to say that personal property which was held in tail before the Act was to be converted into an entailed interest in equity; and he held that it became an absolute interest in personal property, and on the death of Thomas John Price on the 18th January it went to his personal representatives, which, as I say, was a result which nobody anticipated, and they were not there. That arose from treating the Act which created a trust for sale as having converted the property into personalty—realty into personalty—immediately and for all purposes. As I say, that was hardly perhaps a benevolent construction. One can see quite well how the learned judge arrived at it, but it seems to me there was an opening for a benevolent construction on the wording of s. 35 which creates the statutory trusts, because the trustees are to give effect to the rights of parties interested in "the land"; that is to say, when you come to look at the interests which are to be affected, you treat it as the interest which the parties have in the land, and that is the land before conversion, and their interest in the land was that they were tenants in tail, so that the land would pass to all the people interested under the entail, to all the males equally. As I say, a benevolent construction might have given effect to that, but the learned judge construed the Act quite strictly, and produced a result which no one quite anticipated, so that where you have an estate tail held in undivided shares before the Act, it apparently ceases to be held in tail and becomes an absolute interest in personal property on the passing of the Act. But still worse was the decision in *Re Kempthorne* [1930] 1 Ch. 268. When I say, "still worse," I do not mean to say that the decision was wrong; technically one can quite see that it is difficult to get away from the decision that took place, but it was not benevolent in this sense, that it produced a result which no one can really imagine the testator intended. The facts were these: The testator was a solicitor, and he gave "all my freehold and copyhold property" to his brother whom he named, and "all my leasehold property, personal property and effects" to certain brothers and sisters in certain shares. At the time he made his will—I think it was in 1911—he was entitled to a very important piece of real estate. It was a share—I think it was a half share—of some real estate worth about £16,000. He did not make a new will on the passing of the Law of Property Act. He either did not consider the matter, or, of course, it may be that he wanted to alter the whole disposition of his will, but it seems very unlikely. The case was heard first by Mr. Justice Maugham, who did not express any view of his own, but merely followed *Re Price*, that the passing of the Act had converted this share of real estate into personal property, and as the will speaks from death, the personal property passed to the brothers and sisters in the shares in which the personalty was given to them. The case then went to the Court of Appeal, and the Court of Appeal came to the same conclusion. The Master of the Rolls, a little, based himself on the fact that the testator was a solicitor, and he said: "We cannot speculate whether he deliberately intended to leave the Law of Property Act to operate." Of course, there is a presumption that everybody knows the law—one of the most extravagant presumptions, I think, that ever existed in any legal system—and, perhaps, the presumption was stronger in the case of a solicitor; but one knows by experience that people, perhaps even more so solicitors, having made their wills do not bother to look at them about once a year and see if the law has been changed, or something of that kind; and one cannot help feeling that the testator never intended, because the Statute had turned this real estate, worth £16,000, technically into personal property, remembering that it needed the decision in *Re Price* to say it had done so, that therefore he wanted to change his disposition and instead of giving this property to his brother to give it to his brothers and sisters in these shares. There, again, it always seems to me that a benevolent construction might possibly have been adopted on the lines that, under the Wills Act, a will only speaks from death as regards the property comprised in it if a contrary intention does not appear, and when you look at the facts of the case and the date of the will, I do not say it was so, but one feels that any court wishing to be benevolent, might have said that the circumstances, coupled with the wording of the will, showed a contrary intention. The case was not taken to the House of Lords, which is, perhaps, rather surprising, having regard to the amount at stake, because in any question of construction, particularly if the strict construction produces some hardship, as a matter of business it is always worth following it up and appealing when there is as much at stake as a sum of £16,000. However, it was not appealed, and the decision stands, and accordingly one has to be very careful to remember that all undivided shares of land became personal property as from the 1st January, 1926. One bearing of that which you should look out for, I think, is the effect that this conversion may have on a charge on a reversionary interest. I do not know whether you have realised how curious the law is with regard to the Statute of Limitations as applied to reversionary interests. The law stands in this way: if you have a charge on a reversionary interest in land—in freehold—the Statute of Limitations does not begin to run until the reversion falls in. That is convenient, because, as a rule, the person who has charged his reversion does not want to be called upon to pay until the reversion does fall in. If there is a charge on a reversionary interest in personalty, then there is no Statute of Limitations which applies at all, which, perhaps, is rather curious, but it does not do very much harm. But, supposing you have a charge on a reversionary interest in the proceeds of sale of land held upon trust for sale, it has been held that the Statute begins to run as soon as the money becomes payable. Of course, in most mortgages the money is made payable six months from the date, or something of that kind, and accordingly the Statute begins to run from the day when the money is due under the mortgage, and the remedy of the lender may be barred though the reversion has not fallen in. That is a thing you have to be rather careful about if you are advising people who are lending money on a mortgage of a reversionary interest in the proceeds of sale of land, and more so now that all undivided shares in land are treated as being the proceeds of sale of land held upon trust for sale. The safest way to prevent the Statute from running would be to fix the date for payment at a very long period hence, provided you do not go into perpetuity. A case which decided that as regards the effect of the Statute of Limitations on reversionary interests in the proceeds of sale is *Re Witham* [1922] 2 Ch. 413.

That finishes what I wanted to say about undivided shares, and you will see, as I said at first, there are a very large number of decisions on this point.

I come now to the question of leases, and certain provisions in the Act with regard to leases. Section 150 of the Law of Property Act makes it clear that a lease can be surrendered and a new lease granted without affecting existing sub-leases. At common law, before any Statutes were passed, you could not surrender a lease which was subject to a sub-lease, and difficulty occurred, but as long ago as the Landlord and Tenant Act of 1730 that was allowed to be done. Section 150 of the Act of 1925 only repeats the provisions of the Act of 1730, though it is stated perhaps rather more clearly. I find that at any rate before the Act there was always a feeling of doubt whether you could surrender a lease and get a grant of a new one when there were sub-leases still existing unless you got in the sub-leases, or got the sub-lessees to consent; but ever since 1730 it has been allowable, and now it is quite clearly so by the Act of 1925. One question arose on that section in the case of *Re Grosvenor Settled Estates* [1932] 1 Ch. 232. You know that a tenant for life under the Settled Land Act can only grant a lease to take effect in possession within a year. A tenant for life wanted to accept the surrender of a lease with several years to run and grant a new lease to the lessee, but the

lessee had granted a sub-lease, and so he was not in possession, and the question was whether, taking the surrender of the existing lease and granting a new one at the same time was granting a lease to take effect in possession, when the sub-lessee was in fact in possession; but Mr. Justice Maugham held that that could be done, and that s. 150 covered a case like that. In the same estate another question arose as to leases. It was a small point. It is reported in [1933] Ch. 87, where the tenant for life wanted to grant a building lease for a long period—a period too long for the ordinary lease. All that the tenant was wanted to do was to re-build the house when required by the estate surveyor; the house did not want re-building yet, but it would before very long, and the tenant was prepared to re-build the house when he should be required to do so by the estate surveyor; and the question was whether you could call that a building lease when there was no immediate obligation to build anything, and it was held you could call that a building lease.

One very important power which was given to the tenant for life in respect of leases was a power given by the Settled Land Act, s. 59, to vary the terms of the lease. Under the old Settled Land Act, supposing there was an existing lease, and the lessee wanted the terms altered, or both parties wished to have them altered, there was no way of altering the terms; what you could do would be to have a surrender of the old lease and the grant of a new one; but sometimes that is inconvenient and expensive, and accordingly this section gives the tenant for life power to vary the terms of the lease without actually accepting a surrender. Certain questions arose on that. In *Re Savile Settled Estates* [1931] 2 Ch. 210, 216, the tenant for life had, before 1926, granted several mining leases for sixty years, and after the Act of 1925 was passed, of course he could grant leases up to 100 years. What he wanted to do was, without accepting surrenders of existing leases, to alter the terms of the lease by changing the sixty years into 100 years. Great doubt was expressed as to whether he could prolong the lease for another forty years without accepting a surrender and granting a new lease; but it was held that the Act says that you may vary or alter the terms of the lease. One of the most important terms of the lease is the term for which it is held, and accordingly it was held that the sixty years' leases could be converted into 100 years' leases merely by the tenant for life executing a deed for that purpose. Whether or not that would operate in law as a surrender was left open. A similar question arose, and again that question was left open, in the case of *Re Bruce* [1932] 1 Ch. 316. There, again, there had been a mining lease, in that case for forty years, which had been made in the year 1908, and it expired, I think, in the year 1947, but the lease had been granted by a person who had power to make a lease of minerals in such a way that the beneficiary for the time being could take the whole of the rents. That tenant for life died in 1912, and a new tenant for life after 1926 wanted to enlarge the term to 100 years, and he also wanted to be able to continue to take the whole of the rent during the continuance of the lease expiring in 1947. Again it was held that whether or not that would amount to a surrender at law as between the tenant for life and the lessee, it could be done merely by executing a deed, and that the rights of the tenant for life to the rents would not be affected; he could continue to take the whole of the rent up to the year 1947, but after that under the new lease which he was granting as tenant for life he would have to set aside a quarter of the rents, as is necessary, as you know, in the case of a tenant for life granting a lease of mines under the Act.

Now I think it is time for us to stop. (*Applause.*)

At a meeting of Hebburn-on-Tyne Urban District Council it was reported that Durham County Council will suggest to the Royal Commission on Tyneside Unification that there should be no change made in the existing system of local government.

Notes of Cases.

Appeals from County Courts.

Jones *v.* Lamond.

Lord Wright, M.R., Slesser and Greene, L.JJ.
1st November, 1935.

TORT — ASSAULT — ACTION FOR DAMAGES — DEFENDANT PREVIOUSLY BOUND OVER IN COURT OF SUMMARY JURISDICTION—WHETHER CONVICTED—ENTRY IN REGISTER—ONUS OF PROOF—OFFENCES AGAINST THE PERSON ACT, 1861 (24 & 25 Vict. c. 100), s. 45—PROBATION OF OFFENDERS ACT, 1907 (7 Edw. 7, c. 17), s. 1—CRIMINAL JUSTICE ADMINISTRATION ACT, 1914 (4 & 5 Geo. 5, c. 58), s. 28—CRIMINAL JUSTICE ACT, 1925 (15 & 16 Geo. 5, c. 86), s. 7 (2)—SUMMARY JURISDICTION RULES, 1915 (S.R. & O., 1915, No. 200).

Appeal from Windsor County Court.

The defendant having assaulted the plaintiff in May, 1934, was summoned to appear before the court of summary jurisdiction sitting at Burnham. He was bound over in £10 for six months and ordered to pay five guineas costs. In an action against him he pleaded (*inter alia*) that having been convicted and having entered into the required recognisance and paid the costs, he was released from all further proceedings by the Offences Against the Person Act, 1861, s. 45. The register of the court of summary jurisdiction, which was produced in evidence, showed the minute of adjudication: "Bound over in £10 for six months and to pay £5 5s. costs." His Honour Judge J. R. Randolph, K.C., gave judgment for the plaintiff for £50 damages. The defendant appealed.

LORD WRIGHT, M.R., dismissing the appeal, referred to ss. 42, 43, 44 and 45 of the Offences Against the Person Act, 1861, and said that the certificate did not establish the fact that the defendant had been convicted. His lordship then referred to the Probation of Offenders Act, 1907, s. 1, and the Criminal Justice Act, 1925, s. 7 (2), and said that if the court of summary jurisdiction proceeded under the 1907 Act it might, without proceeding to a conviction, discharge the offender conditionally upon his entering into a recognisance (being bound over) and order him to pay costs or damages or both together. This procedure was to be contrasted with proceedings under the Act of 1861 as amended by the Act of 1925, which by s. 39 amended and supplemented ss. 42 and 43 of the earlier Act. In this case the magistrates might have proceeded either under the Act of 1861 or the Act of 1907, which replaced an earlier provision of the Summary Jurisdiction Act, 1879. In the former case they could only proceed to impose the different penalties if they convicted the offender; in the latter they could adjudicate without proceeding to a conviction. Here the defendant had not proved that the magistrates proceeded under the Act of 1861. His lordship referred to the Summary Jurisdiction Rules, 1915, made under the Criminal Justice Administration Act, 1914, s. 28, and said that the form here produced contained the headings required by r. 3 and Form 88. Form 89 was the form of extract from a register for proving a conviction, and no such extract had here been produced. The extract produced fulfilled the conditions of r. 3 and Form 88 save that the clerk had omitted the words "P.O. Act" mentioned in r. 5. This was an irregularity, but could not help the defendant, who could only prove a conviction by producing an extract from the register fulfilling the provisions of r. 6 and Form 89. Even if the extract were ambiguous it would not help the defendant, who would have to prove affirmatively that he had been convicted.

SLESSER and GREENE, L.JJ., agreed.

COUNSEL: *M. O'Connor; E. Pearce.*

SOLICITORS: *Edmond O'Connor & Co.; Kenneth Brown, Baker, Baker.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—Chancery Division.

Powell Duffryn Steam Coal Company Limited *v.* Edwards and Others.

Clauson, J. 7th November, 1935.

Colliery—Show Cards—Holding of, on Premises—No Custom—Damages—Injunction.

In this action the Powell Duffryn Steam Coal Company, of Windsor Colliery, Abertrider, Glamorgan, claimed an injunction against the defendants, who were workmen employed at the colliery, a miners' agent, and the secretary of the local lodge of the Miners Federation, to restrain them from holding a "show cards" on the colliery premises, and also from setting up tables to collect contributions from members of the Federation on the colliery premises. In the year 1914 the defendants conducted a "show cards" at the plaintiffs' colliery. It was admitted that the defendants must establish some legal justification for so doing, and, in the case of defendants not employed on the premises for going on to the colliery premises to conduct "show cards," otherwise the latter must be taken to have been mere trespassers. The justification suggested was based on the terms of the contracts of employment, which embodied the terms of the Conciliation Board Agreement. By cl. 35 of that agreement the owners and workmen were bound to observe and be subject to all the customs, provisions and conditions existing on 2nd September, 1915, at the collieries, and no variation was to be made except by mutual arrangement. The defendants alleged, but the plaintiffs denied, that at the material date there was a custom that whenever the workmen desired they could hold a "show cards" on the colliery premises.

Clauson, J., in giving judgment, then reviewed the evidence at considerable length and said that "show cards" were held as early as 1903 and from 1906 to 1911 the management allowed the use of the "show cards," but in 1913 the management definitely refused to allow them any further on their premises. On 10th May, 1915, the plaintiffs' agent wrote protesting against "show cards" being held on the premises. It appeared that the right to hold a "show cards" was challenged on 10th May, 1915. On the evidence he (his lordship) held that defendants had failed to make out any custom or usage in existence on 2nd September, 1915, for holding a "show cards" without the owners' permission at the Windsor Colliery which could not on or before that date have been held in a court of law to form part of the contract of employment between the workmen and the company. Counsel for the defendants, after the evidence closed, said that he could not argue that any such custom enforceable at law existed, but it was not necessary for the plaintiffs to argue the point. In the result the action succeeded and an injunction would be granted restraining the defendants other than the defendants Bishop, Herbert, Butler and Chamberlain, who were employed at the colliery, from trespassing on the plaintiffs' premises and restraining those defendants from holding or assisting in holding a show of cards on the plaintiffs' premises. All claims to damages were now waived, and the counter-claim would be dismissed. The defendants would have to pay the costs of the action.

Counsel: *Trevor Hunter*, K.C., and *Paul Springman*; *Upjohn*, K.C., and *Gerald Upjohn*.

Solicitors: *Savage, Cooper & Wright*, for *W. H. F. Barklam*, Cardiff; *Smith, Rundall, Dods & Bockett*, for *Morgan, Bruce & Nicholas*, Pontypridd.

[Reported by S. E. Williams, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Coles *v.* Odhams Press, Ltd., and Another.

Lord Hewart, C.J., Humphreys and Singleton, JJ. 7th November, 1935.

Lotteries—Crossword Puzzle—Alternative Solutions—Guesswork—Betting and Lotteries Act, 1934 (24 & 25 Geo. 5, c. 58), ss. 22 (1) (*c*) (i), 26 (1) (*b*).

Appeal against a decision of the magistrate (Mr. Dummett), sitting at Bow Street Police Court, dismissing summonses which charged the respondents with publishing, on the 27th January, 1935, in *The People*, an advertisement of a lottery called "Great Crossword Offer, £2,000," contrary to s. 22 (1) (*c*) (i) of the Betting and Lotteries Act, 1934, and with conducting a competition in which success did not depend to a substantial degree on the exercise of skill, contrary to s. 26 (1) (*b*) of the Act. At the hearing of the summonses, the following facts were proved or admitted: On the 27th January, 1935, *The People* advertised an offer of £2,000 and other prizes for the correct solution of a crossword puzzle. Some of the correct words in the puzzle were not difficult to discover and were the only possible answer. Some of the spaces of the puzzle could, however, be filled equally appropriately by alternative words. For the appellant, it was contended that in many cases the alternative word was as appropriate as the correct word, and that if, in the cases where alternative words were possible, guesswork was the only means of discovering which alternative the editor of the paper would hold to be the right one, the scheme was a lottery because the prize was in those circumstances allotted by chance. For the respondents, it was contended (1) that some skill was required to do the framework of the puzzle; (2) that the required skill consisted in discovering the so-called alternatives and rejecting the less appropriate one, and (3) that there was in each case one word more appropriate than the other, so that there were in fact no alternatives. The magistrate found that in most of the cases the word chosen by the editor was the most appropriate to the clues, that in some cases it was doubtful if the word chosen was the most appropriate, and that in the remainder the alternative word was better. He was, however, of opinion (1) that the competition must be considered as a whole, and that he was not justified in basing the question on a distinction between what were "difficult" and what were "easy" words, and (2) that a considerable element of skill was necessary to solve the puzzle. He accordingly dismissed the summonses.

Lord Hewart, C.J., said that there was a wide difference between a case where persons performed a literary exercise and allowed someone to pick out their best effort and a case where persons undertook to make a series of guesses at something already decided behind their backs, on the terms, not that anyone should exercise judgment as to which of their efforts was the best, but that someone should merely decide which effort came the nearest to a previously fixed standard. A lottery was a distribution of prizes by chance. Nothing in this scheme suggested either that the solution adjudged correct would be, or be thought to be, the best, or that the editor would seek to find the best solution. The solution which was to be adjudged correct was not to be picked out of the efforts of the competitors in competition with each other. It was to be the solution found on examination to coincide most nearly with a set of words chosen beforehand by some person, unknown to the competitors, who was perfectly at liberty to act in an arbitrary or capricious manner. The competitors were in fact invited to pay a certain number of pence in order to have the opportunity of taking blind shots at a hidden target. The word "lottery" was written all over the scheme, and the case must go back to the magistrate with a statement that the competition was on the face of it a lottery. The respondents would have an opportunity of calling evidence to support their case, since that stage had not been reached at the original hearing. It was, however, difficult to see what evidence could be offered that would enable the court to say that an offence had not been committed.

Humphreys and Singleton, JJ., agreed.

Counsel: *Roland Oliver*, K.C., and *Eustace Fulton*, for the appellant; *Sir William Jowitt*, K.C., and *L. A. Byrne*, for the respondents.

Solicitors: *Solicitor for the Metropolitan Police*; *Lewis and Lewis*.

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Re I. G. Lever (presumed deceased).

Langton, J. 23rd October, 1935.

PROBATE—PRESUMPTION OF DEATH—APPLICATION FOR SPECIAL GRANT OF ADMINISTRATION—JOINDER OF APPLICATIONS IN ONE MOTION—COURT OF PROBATE ACT, 1857 (20 & 21 Vict., c. 77), s. 73.

In this matter two applications were joined in the one motion, viz.: (1) for leave to swear that the death of Ida Gertrude Lever had occurred on or since the 1st January, 1894; and (2) for a grant of administration of her estate under s. 73 of the Court of Probate Act, 1857. The presumed deceased, Mrs. Lever, was a married woman. When last heard of in 1893, in Paris, she was not living with her husband, who died in 1914. Inquiries made to discover whether she was still living or had left children had been without result. She was entitled to a one-third interest in unappointed funds of the marriage settlement of her parents, now deceased. The applicant, Miss G, was residuary legatee under the will of the presumed deceased's mother, who died in 1932. Counsel in asking for a joint grant to the applicant and an assurance company, stated that there was no evidence to show whether the presumed deceased survived her husband or a sister of hers, who had died in 1923 a spinster, intestate; if the latter, she would, if alive, have been entitled to further trust funds. An arrangement had been made by which administrators of the presumed deceased would pay over her estate to the executor of her husband in two equal shares, and an insurance policy had been taken out covering all risks to be incurred thereby. On the question raised by the court as to the propriety of combining the two separate applications in the one motion, it was submitted that there was no rule to the contrary, and that a precedent for such a course was contained in "Mortimer on Probate," 2nd ed., at p. 1055.

LANGTON, J., said that having regard to the special circumstances, an order would be made in the terms of the motion.

COUNSEL: *F. L. C. Hodson.*

SOLICITORS: *Evans, Barraclough and Co.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Simon *v.* Simon and Others (Nurick and Another Intervening).

Bucknill, J. 25th October, 1935.

DIVORCE—EVIDENCE—CERTIFICATE ISSUED BY DOCTOR SINCE DECEASED—EXCEPTION TO HEARSAY RULE DEFINED—DOCUMENT INADMISSIBLE.

During the hearing of this suit for dissolution it was sought to put in evidence a certificate which had been obtained by a young woman in 1929 from a doctor since deceased, the present charge against her relating to a date prior thereto. Counsel submitted that the case came within the well-known exception to the rule against hearsay evidence, namely, that declarations made by deceased persons in the ordinary course of duty, contemporaneously with the facts stated, were admissible. The doctor had a duty to give the certificate which was sought after having arrived at an honest opinion about the woman's condition. The doctor had entered into a contract to make a declaration and gave it. Counsel referred to *Mellor* v. *Walmesley* [1905] 2 Ch. 164, at p. 167; *Mills* v. *Mills* (1920), 36 T.L.R. 772; and *Dawson* v. *Dawson and Hepperstock* (1905), 22 T.L.R. 52. Counsel *e contra* submitted that to admit the doctor's declaration after his death would be to open the door to the admission in evidence of any opinion expressed by a professional man in the exercise of his calling. There was no duty imposed on the doctor in question, statutory or professional, to make a declaration. He merely gave it in the exercise of his calling. Counsel referred to *Smith* v. *Blakey* (1867), L.R. 2 Q.B. 326; *Mercer* v. *Dennis* [1905] 2 Ch. 358; and to Lord Merrivale's judgment in *Mills* v. *Mills, supra.*

BUCKNILL, J., in giving judgment, said that the rule was that evidence must be given in open court and the witness be subject to examination. One exception was in connection with writings made by deceased persons in certain circumstances which had been stated by Lush, J., in *Smith* v. *Blakey, supra*, at p. 335, as follows: "When an entry is said to be admissible, as made in the course of duty, it is not meant that every entry or statement which it is the duty of the deceased to make can be used in evidence against third persons; but the exception is limited to the case in which it was the duty of the deceased to do a particular thing and to record the fact of having done it." In the present case the doctor did not have any duty to record the result of his examination or to give any writing stating what that result was. No doubt the doctor did so in pursuance of his profession. He (his lordship) was supported in his view, that the certificate was not within the exception, by Lord Merrivale's decision in *Mills* v. *Mills, supra.* To admit the document put forward would be to extend the rule in a very serious way. The certificate was not admissible.

COUNSEL: *F. L. C. Hodson*, for the party seeking admission of the certificate; *Sir Patrick Hastings*, K.C., and *A. Richard Ellis*, contra.

SOLICITORS: *Daybells; Pettiver and Pearkes.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Re A. B. Simpson, deceased.

Langton, J. 11th November, 1935.

PROBATE—CAUSE OF ACTION AGAINST DECEASED ESTATE—REFUSAL BY PERSONS PRIMARILY ENTITLED TO TAKE ADMINISTRATION—SPECIAL GRANT TO NOMINEE OF PROPOSED PLAINTIFF—LAW REFORM (MISCELLANEOUS PROVISIONS) ACT, 1934 (24 & 25 Geo. V, c. 41), s. 1 (3) (*b*)—SUPREME COURT OF JUDICATURE (CONSOLIDATION) ACT, 1925 (15 & 16 Geo. V, c. 49), s. 162—ADMINISTRATION OF JUSTICE ACT, 1928 (18 & 19 Geo. 5, c. 26), s. 9.

This was a motion for the appointment of an extraneous person as administrator of the estate of Alistair Begg Simpson, a Cambridge University undergraduate, who was killed on 28th October, 1934, in a collision in which a motor car and a motor cycle which he was driving were involved. Counsel in support of the motion said that his client, the applicant, had been injured in the collision and wished to take proceedings against the estate of the deceased for damages under s. 1 (3) (*b*) of the Law Reform (Miscellaneous Provisions) Act, 1934, which had modified the effect of the principle *actio personalis moritur cum persona.* The deceased was a minor, and his next of kin had declined to take out representation, so that the applicant was prevented as matters now stood from making a claim in respect of the deceased's insurance policy. The applicant not having the benefit of a judgment, could not ask for administration *qua* creditor, but the court had power to make a special grant under s. 162 of the Judicature (Consolidation) Act, 1925, as amended by s. 9 of the Administration of Justice Act, 1928, and an accountant therefore was put forward as being a fit and proper person to have a grant, in order that the applicant might have some person to sue as representative of the estate. The next of kin of the deceased had been served with notice of motion and had intimated that they would take no part in the proceedings.

LANGTON, J., made an order as prayed.

COUNSEL: *H. B. Durley Grazebrook*, for the applicant.

SOLICITORS: *Waterhouse & Co.*, for *Few & Co.*, Cambridge.

Re J. G. Cumming, deceased.

This was a similar application in which the deceased man had been killed in a motor cycle collision last year, as a result

of which the applicant had lost a leg. Counsel, in moving the court, stated that the widow of the deceased resolutely refused to take out letters of administration and his father had also declined. For the purpose of claiming against the estate, which consisted solely of the motor insurance policy, it was necessary to appoint someone to act as the legal personal representative of the deceased, and therefore a nominee was put forward by the applicant.

LANGTON, J., made the order as prayed, directing that citation of the deceased's widow and father be dispensed with.

COUNSEL: *C. G. Talbot-Ponsonby*, for the applicant.

SOLICITORS: *Savage, Cooper & Wright*, for *W. A. L. Houlder and Co.*, Southall.

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

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CORRECTION: PROOF OF CLAIM AGAINST ASSIGNEE OF TERM.

We are indebted to one of our readers for drawing our attention to a misprint in the answer to a letter which appeared under the above title in the Correspondence column of our issue of 28th September, at p. 695. The reference to an article on assigning a grantee's right to indemnity in the last line of that answer should be 75 SOL. J. 228, and not 288 as printed.

Obituary.

SIR HENRY HARTNOLL.

Sir Henry Sulivan Hartnoll, formerly a Judge of the Chief Court of Lower Burma, died at Eggesford, North Devon, on Thursday, 31st October, at the age of seventy-three. Educated at Exeter Grammar School and Trinity College, Oxford, he passed the Indian Civil Service examination in 1881, and two years later was posted to Burma. He was a District Collector for twelve years and then a Divisional Commissioner until 1906, when he became a Judge of the Chief Court of Lower Burma. He had been called to the Bar by the Inner Temple in 1898. In 1914 he received the honour of knighthood, and he retired in 1916.

MR. EDWARD SHORTT, K.C.

The Right Hon. Edward Shortt, K.C., of Hare Court, Temple, died on Sunday, 10th November, at the age of seventy-three. Mr. Shortt, who was educated at Durham School and Durham University, where he was later awarded the honorary degree of D.C.L., was called to the Bar by the Middle Temple in 1892. He joined the north-eastern circuit, and acquired a large junior practice in both civil and criminal cases. In 1907 he was made Recorder of Sunderland, and he took silk in 1910. He was elected as Liberal Member of Parliament for Newcastle-upon-Tyne during the same year, and held the seat all through his Parliamentary career. He became Chief Secretary for Ireland in 1918, and in 1919 he was promoted to the office of Home Secretary, which he held until 1922. He was at one time a member of the General Council of the Bar, and he was a Bencher of the Middle Temple. In 1929 he was appointed President of the British Board of Film Censors.

MR. H. C. BURGIN.

Mr. Harold Charles Burgin, solicitor, of Henrietta Street, W.C., died at Sutton, Surrey, on Saturday, 9th November, in his forty-sixth year. Mr. Burgin, who was admitted a solicitor in 1913, was the younger son of Mr. Edward Lambert Burgin, solicitor, of Gray's Inn Place, W.C.

MR. S. BURRIDGE.

Mr. Samuel Burridge, retired solicitor, of Plymouth, died at Peverell on Wednesday, 6th November, at the age of seventy. Mr. Burridge, who was admitted a solicitor in 1916, was a partner in the firm of Messrs. Shelly, Johns & Burridge, solicitors, of Plymouth.

Societies.

The Law Society.

PROVINCIAL MEETING, 1936.

At the request of the Nottingham Society The Law Society's Provincial Meeting, 1936, is to be held at Nottingham in the week commencing 21st September, 1936.

Lincoln's Inn.

GRAND DAY.

Tuesday, 12th November, being Grand Day in Michaelmas Term at Lincoln's Inn, the Treasurer, Sir Felix Cassel, K.C., and the Masters of the Bench entertained the following at dinner: The Danish Minister, the Marquess of Milford Haven, Viscount Hampden, Lord Rayleigh, Lord Wright, Mr. H. A. L. Fisher (Warden of New College), Sir John Broadbent, General Sir Walter Braithwaite, Marshal of the Royal Air Force Sir John Salmond, Colonel Sir Vernon Kell, Sir Harry Peat, Sir Richard Livingstone (President of Corpus Christi College, Oxford), Sir Ernest Fass (the Public Trustee), Dr. Archibald Fleming, Professor H. D. Hazeltine, and Sir Reginald Rowe (the Under-Treasurer).

The Benchers present on the occasion, in addition to the Treasurer, were: Sir Alfred Hopkinson, K.C., Mr. C. E. E. Jenkins, K.C., Sir Thomas Hughes, K.C., Sir Frederick Pollock,

K.C., Lord Alness, Lord Russell of Killowen, Mr. Justice Clauson, Mr. Justice Macnaghten, Lord Justice Best, Mr. F. H. L. Errington, Mr. Theobald Mathew, Sir Arthur Colefax, K.C., Lord Maugham, Mr. R. E. L. Vaughan Williams, K.C., Mr. Justice Atkinson, Judge Thompson, K.C., Mr. Justice Luxmoore, Judge Kennedy, K.C., Mr. J. W. Manning, K.C., Sir William Holdsworth, K.C., Sir Gerald Hurst, K.C., Mr. W. E. Tyldesley Jones, K.C., His Honour Hugh Sturges, K.C., Mr. A. M. Latter, K.C., Judge Reeve, K.C., Mr. Justice Stafford Crossman, Mr. Wilfrid Hunt, Mr. Tom Eastham, K.C., Mr. J. H. Stamp, Mr. A. L. Ellis, Mr. Justice Bennett, Mr. H. B. Vaisey, K.C., Mr. R. H. Hodge, Mr. H. F. F. Greenland, Mr. F. D. Morton, K.C., Mr. R. A. Willes, Mr. L. L. Cohen, K.C., Mr. W. Cleveland-Stevens, K.C., Mr. J. Norman Daynes, K.C., Mr. Lewis Noad, K.C., and Mr. A. P. Vanneck.

United Law Society.

A meeting of the United Law Society was held in the Middle Temple Common Room, at 7.45 p.m., on the 4th November. Mr. S. A. Gibbons proposed the motion: "That the formation of a truly Conservative Government is an urgent necessity." Mr. S. A. Redfern opposed. Miss Colwill, Messrs. Burke, Hill, McQuown, Menzies, Mishcan, Owens, S. E. Redfern and Walton also spoke. After Mr. Gibbons had replied, the motion was put to the House and lost by seven votes. There were nineteen members and two visitors present.

A meeting of the United Law Society was held in the Middle Temple Common Room at 7.45 p.m. on the 11th November, 1935. Mr. J. H. Vine-Hall proposed the motion: "That flesh-eating is degrading and unhealthy." Mr. H. Wentworth Pritchard opposed. Miss Colwill, Messrs. Ball, Beaumont (visitor), Burke, McQuown, Menzies, Owens, S. A. Redfern, S. E. Redfern, Walton and Wood-Smith also spoke. After Mr. Vine-Hall had replied, the motion was put to the House and lost by eight votes. There were seventeen members and ten visitors present.

The Hardwicke Society.

A meeting of the Society was held on Friday, 8th November, at 8.15 p.m., in the Middle Temple Common Room, the President (Mr. T. H. Mayers) in the chair. Mr. C. C. Gallagher moved "That in the opinion of this House no man is worth more than £1,000 a year." Mr. S. M. Krusin opposed. There also spoke Mr. Scholefield, Mr. Grunbaum, Mr. Fairfax-Lucy, Mr. Bucher, Mr. Wigan, Mr. Campbell Lee, Mr. MacGregor, Mr. Douglas, Mr. Fearnehough, Mr. Regendanz, Mr. Oakes, Mr. G. E. Llewellyn Thomas (Hon. Secretary), Prince Lieven. The hon. mover having replied, the House divided, and the motion was lost by one vote.

The Medico-Legal Society.

An ordinary meeting of the Society will be held at Manson House, 26, Portland-place, W.1, on Thursday, the 28th November, at 8.30 p.m., when a Paper will be read by Dr. F. J. McCann on "Some Medico-Legal Problems in connection with Pregnancy and Parturition." Members may introduce guests to the meeting on production of the member's private card.

By the Courteous invitation of the British Psychological Society (Medical Section) a joint meeting will be held on Wednesday, the 20th November, at 8.30 p.m., at the Institute of Medical Psychology, Malet-place, Gower-street, W.C.1, on the subject of "Nullity and Impotence." The opening papers will be read by Dr. E. A. Bennet and Dr. Adrian Stephen, who will be followed by two members of the Medico-Legal Society. All members of the Medico-Legal Society are invited to attend.

The Union Society of London.

(Centenary Year.)

A meeting of the Society was held at the Middle Temple Common Room, on Wednesday, the 6th November, at 8.15 p.m., the President (Mr. J. P. Winckworth) being in the Chair. Mr. Orme proposed the motion: "That this House would welcome the return of the National Government." Mr. Sandilands opposed, and Mr. Russell-Clarke, The Hon. Secretary, Capt. Ellershaw, Mr. Johnson, Mr. Hurle Hobbs, Mr. Hubert Moses and Mr. Picarda also spoke. Mr. Orme having replied, upon division the motion was carried by one vote.

Law Students' Debating Society.

At a meeting of the Society held at The Law Society's Court Room, on Tuesday, 5th November (Chairman, Mr. J. R. Campbell Carter), the subject for debate was: "That the case of *In re National Health Insurance Act*, 1924; *In re Professional Players of Football* [1934] 2 K.B. 261, was wrongly decided." Mr. W. M. Pleadwell opened in the affirmative; Miss U. A. Hastie opened in the negative. Mr. B. W. Main seconded in the affirmative; Mr. E. C. Durham seconded in the negative. The following members also spoke: Messrs. A. T. Wilson, F. B. Cockburn, L. J. H. Jackson, E. W. J. Cambridge, G. J. Jeudwine and H. Claxton. The opener having replied, and the Chairman having summed up, the motion was carried by one vote. There were ten members and two visitors present.

The Dorset Law Society.

The Dorset Law Society have attained the centenary of their foundation. A centenary dinner was held at Hotel Burdon, Weymouth, on Saturday, the 12th October, under the presidency of Sir Alexander Pengilly.

Solicitors' Benevolent Association.

The monthly meeting of the Directors was held at 60, Carey-street, London, W.C.2, on the 6th November, Mr. T. G. Cowan in the chair. The other Directors present were Sir A. Norman Hill, Bart., Sir E. F. Knapp-Fisher, Sir Edmund Cook, C.B.E., Mr. C. S. Bigg (Leicester), Mr. E. E. Bird, Mr. G. S. Blaker (Henley), Mr. P. D. Botterell, C.B.E., Mr. N. T. Crombie (York), Mr. T. S. Curtis, Mr. E. F. Dent, Mr. A. G. Gibson, Mr. A. N. Hickley, Mr. T. E. Jackson (Huddersfield), Mr. G. Keith, Mr. C. W. Lee, J.P., Mr. C. G. May, Mr. R. C. Nesbitt, Mr. H. F. Plant, Mr. W. N. Riley (Brighton), Mr. A. B. Urmston (Maidstone), Mr. H. White (Winchester) and the Secretary. £1,188 was distributed in grants to necessitous cases; twenty new members were elected; Mr. C. S. Bigg (Leicester) was elected Chairman and Mr. R. C. Nesbitt as Vice-Chairman for the ensuing year; other general business was transacted.

Rules and Orders.

The Local Government (Polls on Promotion of Bills) Regulations, 1935, dated November 6, 1935, made by the Minister of Health under the Ninth Schedule to the Local Government Act, 1933 (23 & 24 Geo. 5, c. 51). [S.R. & O. 1935, No. 1086. Price 3d. net.]

Legal Notes and News.

Honours and Appointments.

It is announced by the Colonial Office that His Majesty the King has been pleased to approve the appointment of Mr. G. E. Nairac, Procureur and Advocate-General, Mauritius, to be Chief Judge of that Colony, in succession to Mr. P. B. Petrides, whose appointment as Chief Justice, Gold Coast, was announced recently.

The Colonial Office announces the following appointments, promotions and transfers in the Colonial Legal Service:—

Mr. D. T. J. Sherlock, appointed Judge of the Court of Appeal, Jamaica.

Mr. H. M. Godet, appointed Police Magistrate, Bermuda.

Mr. C. M. Reece (Attorney-General, Grenada), appointed Registrar of the Supreme Court, Gibraltar.

Mr. E. A. L. Wijeyewardene (Deputy Public Trustee), appointed Public Trustee, Ceylon.

Lord Russell of Killowen has been appointed Treasurer of the Honourable Society of Lincoln's Inn in succession to Sir Felix Cassel, K.C., as from 11th January, 1936.

Mr. Lewis Noad, K.C., has been elected a Bencher of Lincoln's Inn in place of the late Lord Danesfort, K.C., and Mr. Arthur Percy Vanneck in place of the late Mr. Alfred Adams.

Mr. Farra Robin Aikman Wiseman Conway, B.A. Oxon., solicitor, Deputy Town Clerk of Great Yarmouth, has been appointed Town Clerk of Colwyn Bay in succession to Mr. E. E. King, who has been appointed Deputy Town Clerk of West Ham. Mr. Conway was articled to Mr. F. A. Padmore of Messrs. Tatham, Worthington & Co., Manchester, and was admitted a solicitor in 1927.

Mr. H. BENTLEY, Deputy Town Clerk, has been appointed Town Clerk of Hertford, in succession to Mr. John Longmore, who, on his retirement, has been appointed solicitor and legal adviser.

Mr. P. H. GOODWIN, a Managing Clerk to Messrs. Kenneth Brown, Baker, Baker, solicitors, of Essex-street, Strand, W.C., has been elected Mayor of Richmond, Surrey, for the current year. Mr. Goodwin has been associated with his present firm and with Messrs. Baker, Baker & Co., prior to their amalgamation in 1909, for thirty-three years.

Professional Announcements.

(2s. per line.)

SOLICITORS & GENERAL MORTGAGE & ESTATE AGENTS ASSOCIATION.—A link between Borrowers and Lenders, Vendors and Purchasers.—Apply, The Secretary, Reg. Office: 12, Craven Park, London, N.W.10.

Notes.

The next General Quarter Sessions of the Peace for the Borough of Walsall will be held at the Guildhall, Walsall, on Thursday, the 28th day of November, at 10 o'clock in the forenoon.

The Directors of the Alliance Assurance Company, Limited, at their meeting on the 13th November, declared an interim dividend, payable on the 4th January, 1936, of 8s. per share, less income tax.

A suggestion that the construction and repair of all roads, the signalling apparatus on them, and the traffic using them should be controlled entirely by a Central Highways Board was made by Mr. R. W. Sewill, national director of the Associated Road Operators, Ltd., at a conference of that body held at Olympia last Monday.

The Master of the Rolls has accepted the presidency of the British Records Association in succession to Lord Hanworth. He hopes to preside at the general meeting, which, as announced in last week's issue, will be held on the 18th November, and, with the Master of the Grocers' Company, to receive the guests at Grocers' Hall that evening.

Mr. W. S. Murphy, elected on 1st November as a member of Finchley Borough Council, sent in his resignation to the first meeting of the new council last Saturday, says *The Times*. He said that he had been legally advised that his position as a schoolmaster under the Middlesex education authority in Finchley did not allow of him to be a councillor. A by-election will be held.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT No. 1.	GROUP I. MR. JUSTICE EVE. Non-Witness.	GROUP I. MR. JUSTICE BENNETT. Witness. Part I.
	Mr.	Mr.	Mr.	Mr.
Nov. 18	Andrews	Blaker	Hicks Beach	*Jones
,, 19	Jones	More	Blaker	*Hicks Beach
,, 20	Ritchie	Hicks Beach	Jones	*Blaker
,, 21	Blaker	Andrews	Hicks Beach	Jones
,, 22	More	Jones	Blaker	*Hicks Beach
,, 23	Hicks Beach	Ritchie	Jones	Blaker
	GROUP I. Mr. JUSTICE CROSSMAN. Witness. Part II.	Mr. JUSTICE CLAUSON. Witness. Part II.	GROUP II. Mr. JUSTICE LUXMOORE. Witness. Part I.	Mr. JUSTICE FARWELL. Non-Witness.
	Mr.	Mr.	Mr.	Mr.
Nov. 18	Blaker	*Andrews	*More	Ritchie
,, 19	*Jones	More	*Ritchie	Andrews
,, 20	Hicks Beach	*Ritchie	*Andrews	More
,, 21	*Blaker	Andrews	*More	Ritchie
,, 22	Jones	*More	Ritchie	Andrews
,, 23	Hicks Beach	Ritchie	Andrews	More

* The Registrar will be in Chambers on these days, and also on the days when the Court is not sitting.

A UNIVERSAL APPEAL

TO LAWYERS: FOR A POSTCARD OR A GUINEA FOR A MODEL FORM OF BEQUEST TO THE HOSPITAL FOR EPILEPSY AND PARALYSIS, MAIDA VALE, W.9.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 21st November, 1935.

	Div. Months.	Middle Price 13 Nov. 1935.	Flat Interest Yield. £ s. d.	‡Approximate Yield with redemption £ s. d.
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	115	3 9 7	3 0 5
Consols 2½%	JAJO	85	2 18 10	—
War Loan 3½% 1952 or after	JD	105	3 6 8	3 2 4
Funding 4% Loan 1960-90	MN	116½	3 8 8	3 0 5
Funding 3% Loan 1959-69	AO	101½	2 19 1	2 18 3
Victory 4% Loan Av. life 23 years	MS	115	3 9 7	3 1 8
Conversion 5% Loan 1944-64	MN	118	4 4 9	2 9 9
Conversion 4½% Loan 1940-44	JJ	111	4 1 1	2 6 7
Conversion 3½% Loan 1961 or after	AO	107	3 5 5	3 1 10
Conversion 3% Loan 1948-53	MS	104½	2 17 5	2 11 2
Conversion 2½% Loan 1944-49	AO	101	2 9 6	2 7 4
Local Loans 3% Stock 1912 or after	JAJO	95½	3 2 10	—
Bank Stock	AO	369½	3 4 11	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	87	3 3 3	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	94½	3 3 6	—
India 4½% 1950-55	MN	113	3 19 8	3 6 5
India 3½% 1931 or after	JAJO	96½	3 12 6	—
India 3% 1948 or after	JAJO	86	3 9 9	—
Sudan 4½% 1939-73 Av. life 27 years	FA	118	3 16 3	3 9 4
Sudan 4% 1974 Red. in part after 1950	MN	112	3 11 5	2 19 10
Tanganyika 4% Guaranteed 1951-71	FA	113	3 10 10	2 18 3
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	109	4 2 7	2 17 0
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	110	3 12 9	3 6 1
*Australia (C'mm'nw'th) 3¾% 1948-53	JD	105	3 11 5	3 5 5
Canada 4% 1953-58	MS	110	3 12 9	3 5 2
*Natal 3% 1929-49	JJ	101	2 19 5	—
*New South Wales 3½% 1930-50	JJ	101	3 9 4	—
*New Zealand 3% 1945	AO	101	2 19 5	2 17 7
Nigeria 4% 1963	AO	112	3 11 5	3 6 9
*Queensland 3½% 1950-70	JJ	101	3 9 4	3 8 2
South Africa 3½% 1953-73	JD	105xd	3 6 8	3 2 8
*Victoria 3½% 1929-49	AO	100	3 10 0	3 10 0
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	95	3 3 2	—
*Croydon 3% 1940-60	AO	100	3 0 0	3 0 0
Essex County 3½% 1952-72	JD	105	3 6 8	3 2 4
Leeds 3% 1927 or after	JJ	93	3 4 6	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	105	3 6 8	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	81½xd	3 1 4	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	94xd	3 3 10	—
Manchester 3% 1941 or after	FA	93	3 4 6	—
*Metropolitan Consd. 2½% 1920-49	MJSD	99xd	2 10 6	2 11 8
Metropolitan Water Board 3% "A" 1963-2003	AO	97	3 1 10	3 2 1
Do. do. 3% "B" 1934-2003	MS	97	3 1 10	3 2 0
Do. do. 3% "E" 1953-73	JJ	100	3 0 0	3 0 0
Middlesex County Council 4% 1952-72	MN	113	3 10 10	3 0 2
† Do. do. 4½% 1950-70	MN	116	3 17 7	3 2 11
Nottingham 3% Irredeemable	MN	92	3 5 3	—
Sheffield Corp. 3½% 1968	JJ	104	3 7 4	3 6 1
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	111	3 12 1	—
Gt. Western Rly. 4½% Debenture	JJ	120½	3 14 8	—
Gt. Western Rly. 5% Debenture	JJ	133½	3 14 11	—
Gt. Western Rly. 5% Rent Charge	FA	130½	3 16 8	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	127½	3 18 5	—
Gt. Western Rly. 5% Preference	MA	115½	4 6 7	—
Southern Rly. 4% Debenture	JJ	110	3 12 9	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	110½	3 12 5	3 8 0
Southern Rly. 5% Guaranteed	MA	127½	3 18 5	—
Southern Rly. 5% Preference	MA	115½	4 6 7	—

*Not available to Trustees over par. †Not available to Trustees over 115.
‡In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date; in the case of other Stocks, as at the latest date.

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